Department of the Army
Pamphlet 200–4

Environmental Quality

Cultural Resources Management

Headquarters
Department of the Army
Washington, DC
1 October 1998

UNCLASSIFIED

SUMMARY of CHANGE

DA PAM 200–4
Cultural Resources Management

This new Department of the Army Pamphlet--

- Provides implementing guidance for Army policy requirements contained in Army Regulation 200-4.
- Outlines a cultural resources management strategy (para 2-1).
- Provides integrated cultural resources management plan preparation guidelines (para 2-3).
- Provides implementing guidance for regulatory/statutory compliance activities (chap 3).
- Contains prototype (boilerplate) programmatic agreements for National Historic Preservation Act Section 106 (app C).
- Contains a prototype (boilerplate) comprehensive agreement for Native American Graves Protection and Repatriation Act (app E).
- Contains guidelines for consulting with Native Americans (app F).

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Cultural Resources Management

By Order of the Secretary of the Army:

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Chief of Staff

Official:

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History. This printing publishes a new DA pamphlet.

Summary. This pamphlet provides guidance for implementation of the Army's policy as prescribed in AR 200-4 Cultural Resources Management. Cultural resources are defined as historic properties as defined in the National Historic Preservation Act, cultural items as defined in the Native American Graves Protection and Repatriation Act, archeological resources as defined in the Archeological Resources Protection Act, sacred sites as defined in Executive Order 13007 to which access is provided under the American Indian Religious Freedom Act, and collections as defined in 36 CFR 79 Curation of Federally-Owned and Administered Collections. Requirements set forth in the National Environmental Policy Act of 1969, the National Historic Preservation Act, the Archeological Resources Protection Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, 36 CFR 79, Executive Order (EO) 13007, and their implementing regulations define the Army's compliance responsibilities for management of cultural resources. Regulations applicable to the Army's management of cultural resources include those promulgated by the Advisory Council on Historic Preservation and the National Park Service.

Applicability.

a. This pamphlet applies to the Active Army, the Army National Guard of the United States, the United States Army Reserve, and to all installations and activities under control of the Department of the Army by ownership, lease, license, public land withdrawal, or any similar instrument. Specifically it applies to—

(1) Army installations and activities;

(2) Army National Guard Federal installations, activities, and sites supported with federally appropriated funds or subject to Federal approval;

(3) Installations and activities, or portions thereof, that are in full-time or intermittent use by the United States Army Reserve or Reserve Officers' Training Corps;

(4) Real property of other Federal, State, and local agencies and private parties used by the Army, United States Army Reserve, or Reserve Officers' Training Corps under license, permit, lease, or other land and or facility use agreement;

(5) Military functions of the United States Army Corps of Engineers.

b. All of the above agencies will be referred to in this regulation as the Army, unless otherwise noted.

c. This pamphlet does not apply to the Civil Works functions of the United States Army Corps of Engineers, except when the United States Army Corps of Engineers is operating on or using funds of Army installations and activities.

d. This pamphlet applies to installations and activities within any State of the United States, the District of Columbia, and territories of the United States (United States).

e. Commanders outside of the United States will comply with—

(1) Substantive cultural resources requirements of general applicability included in host nation law and regulation to the extent practicable or, when adopted, those requirements identified in Final Governing Standards adopted by the DOD Executive Agent;

(2) International Treaties and Status of Forces Agreements;

(3) The National Historic Preservation Act Amendments of 1980, Section 402 (16 USC 470a-2).

Proponent and exception authority. The proponent of this pamphlet is the Assistant Chief of Staff for Installation Management. The proponent has the authority to approve exceptions to this pamphlet that are consistent with controlling Federal statute, regulation, Executive Order, and Presidential Memoranda.

Supplementation. Supplementation and establishment of command and local forms of this pamphlet is prohibited without the prior approval of the Director of Environmental Programs, DAIM-ED, 600 Army Pentagon, Washington, DC 203100-600. The requirements of such supplements must be consistent with and no less stringent than the requirements of this pamphlet.

Suggested Improvements. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) to HQDA, DAIM-ED-N, 600 Army Pentagon, Washington, DC 20310-0600.

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Contents (Listed by paragraph and page number)

Chapter 1
Introduction

1–1. Purpose

a. This pamphlet provides guidance for implementation of the policy requirements in AR 200-4.

b. This pamphlet establishes a comprehensive cultural resources planning and management strategy for the Army, provides an overview of statutes and regulations as well as information regarding Integrated Cultural Resources Management Plans (ICRMPs). The statutes and regulations discussed include:

(1) National Environmental Policy Act (NEPA) of 1969.

(2) National Historic Preservation Act (NHPA) of 1966.

(3) Native American Graves Protection and Repatriation Act (NAGPRA) of 1990.

(4) American Indian Religious Freedom Act (AIRFA) of 1978.

(5) White House Memorandum dated 29 April 1994—Government-to-Government Relations with Native American Tribal Governments.

(6) EO 13007—Indian Sacred Sites, dated 1996.

(7) Archeological Resources Protection Act (ARPA) of 1979, and the Antiquities Act of 1906.

(8) Curation of Federally Owned and Administered Archaeological Collections (36 Code of Federal Regulations (CFR) Part 79).

1–2. References

Required and related publications and the referenced materials are listed in appendix A.

1–3. Explanation of abbreviations and terms

Abbreviations and special terms are explained in the glossary.

Chapter 2
Cultural Resources Management Planning

2–1. Cultural Resources Planning Strategy

a. Ecosystem Management Cultural resources constitute significant elements of the ecosystems in which Army installations and their component activities exist and function. Planning and management of cultural resources should occur within the context of a comprehensive and integrated land, resource, and infrastructure approach that adapts and applies principles of ecosystem management. This involves planning and management of cultural resources by reference to the landscape.

b. Cultural landscape planning approach—

(1) Installation cultural resources management planning occurs through installation Integrated Cultural Resources Management Plans (ICRMP), and can be facilitated by installation Geographical Information Systems (GIS) if available. The cultural landscape planning approach analyzes the spatial relationships among all cultural resources within their natural setting.

(2) Serves as an organizing principle to record the ecosystem in a manner that incorporates the complexity of human cultural interaction with the natural terrain through time. Military installations are treated as an integral entity with interrelationships existing among the natural and cultural resources present. Military operations are treated as one, albeit one of the most significant, of a number of human cultural activities that have influenced the installation cultural landscape. The intent of this approach is to fully integrate cultural resources management with military training, testing and infrastructure operations.

(3) Recognizes that cultural resources may be present on installations because of, or may even be a result of, continuous military occupation and use of the land. Ecosystems on any Army installation have all been effected to some degree by human activity. Prehistoric and historic archeological resources, historic buildings, structures and districts, sacred sites, endangered species habitat, wetlands, riparian areas, and other components of the ecosystem have been influenced, maintained, or created by prehistoric and historic human occupants, and modern military use of the land. All of these natural and man-made features, including those related to military operations, are viewed as a series of surface and subsurface features that make up the installation's cultural landscape.

(4) The cultural landscapes on military installations are unique because there are no other landscapes in this nation that have evolved from a continued use for defense-related purposes. Therefore, there must be functional continuity, military training and testing and other defense related activities must continue to occur to maintain, and to allow the military cultural landscape to continue to evolve.

c. Spatial analysis of the cultural landscape. An important component of the cultural landscape approach is the analysis of the spatial relationships among natural and man-made landscape features. Cultural and natural resources distribution maps generated by installation GIS systems or through mylar overlay maps provide the data for systematic analysis of spatial patterning in land use through time. This has direct planning implications for land management and military training. Time and funds can be maximized by a single comprehensive planning approach based on sound data and analysis. A number of environmental variables are related to patterns of human land use through time including past and present military land uses for training purposes. Analyses of the spatial relationships among the locations of cultural and natural resources and the specific localities effected by past, present and future military use can provide significant land management information for both Army trainers and land managers.

(1) Terrain factors such as elevation, slope, soil texture and drainage, vegetative cover, distance to water, and proximity to roads, other transportation routes, and service centers have resulted in non-random patterns of human land-use through time. These factors influenced the locations selected for prehistoric and historic settlement and activity areas. These same terrain factors influence the locations of specific military field activities, in fact "terrain analysis" is a key element in planning and executing military field training exercises. Identification of these non-random patterns of land use is beneficial for compliance related environmental documentation that requires future impact prediction (for example, NEPA and NHPA documents), preparation of analyses for the consideration of alternatives, for impact avoidance, and in the development of training scenarios in a manner that avoids conflict with sensitive resources.

(2) The non-random distribution of cultural and natural resources and specific locations of military field training and testing activities are important land management factors that can also be used by military planners. Distribution maps of cultural and natural resources locations, overlaid with specific locations of military field training activities (including past and future locations of command posts, individual fighting positions, landing and drop zones, maneuver obstacles, observation posts, avenues of approach, etc.), and proposed infrastructure improvements, may show a non-random pattern of distribution across the landscape. Spatial analyses based on such distribution maps can indicate if the locations of cultural resources, natural resources, and military training and infrastructure improvement activities coincide, and can be used to focus resource management activities in those areas. Such data may also be amenable to statistical analyses of spatial association.

d. Cultural landscape as a planning approach should not be confused with the term "historic landscapes" as used by architectural historians. Historic landscapes are a type of historic property as defined in the NHPA. Historic landscapes on Army installations are those planned or architecturally designed landscapes typically associated with historic districts in cantonment areas. Those historic landscapes are addressed in terms of National Register eligibility rather than as a comprehensive planning approach that incorporates historic properties along with all other categories of cultural resources. Historic landscapes are one of many elements of the larger, encompassing installation cultural landscape.

2–2. Integrated Cultural Resources Management Plans and the cultural landscape approach

a. An Integrated Cultural Resources Management Plan (ICRMP) is the primary tool used to implement an installation cultural resources management program. The ICRMP is a 5-year planning document that assists installations in meeting mission requirements by ensuring that installation activities address cultural resources management and legal compliance requirements. The ICRMP should be comprehensive and utilize the cultural landscape approach to integrate and identify linkages between all resource types.

b. An ICRMP can exhibit varying levels of detail depending on an installation's needs and resource types. At a minimum, the ICRMP should include provisions for a comprehensive planning level survey using the cultural landscape approach and available information regarding project driven future compliance requirements. The plan should be flexible enough to accommodate changing mission requirements. To ensure that the ICRMP continues to meet installation needs, the document should be re-evaluated during installation environmental audits conducted IAW AR 200-1.

c. An ICRMP should utilize the cultural landscape approach as the basis of an installation-wide planning level survey. All cultural resources statutory and regulatory requirements that may affect the installation should be identified along with specific compliance actions for future projects. The planning level survey and cultural landscape approach may be developed as follows:

(1) As part of a planning level survey, GIS or mylar overlays of various data layers may be used to identify spatial interrelationships and land use patterns among the various types of known cultural resources that are present across the installation. Identification of land use patterns may include analysis of land forms, geological structures, natural resources, and their interrelationships with prehistoric and historic human settlement patterns, including areas developed for military use and associated architectural features.

(2) The planning level survey and the cultural landscape approach provides a framework for understanding the entire land use history of an installation. The planning level survey may also include the development of historic contexts, archeological sensitivity assessment, predictive models, and identification of future compliance requirements for specific installation projects and operations. Planning level documents (for example, master plan, ICRMP, INRMP, etc.) and implementing project level actions effecting cultural resources may require compliance with NEPA, NHPA, NAGPRA, ARPA, EO 13007, etc. Project driven compliance activities normally involve work beyond the planning level survey and often require a field inventory of cultural resources, evaluation, treatment, and associated consultations. Additionally, a single resource that is encountered in a project area may generate overlapping compliance requirements, such as an archeological site that is a historic property under NHPA, and contains cultural items under NAGPRA, and is also a sacred site per EO 13007, and an archeological resource as defined in ARPA.

d. The cultural landscape provides the overall framework for the ICRMP and future implementation of management activities or project specific compliance actions. The project driven field inventory within specific project boundaries should use the planning level survey for predictions about potential cultural resource locations, any inter-relationships that exist among known cultural and natural resources, and past military impacts to the area. Likewise, the evaluation of cultural resources encountered during the field inventory will occur not just by reference to regulatory criteria, but within an installation-wide framework of interrelated landscape components. Field techniques for cultural resource inventory and evaluation should utilize, if appropriate and cost effective, available remote sensing and geophysical investigation technologies to facilitate the field investigations. Consultation with the State Historic Preservation Officer (SHPO), Indian tribes, and other interested parties, should occur during planning stages prior to implementation of actual survey and inventory efforts to obtain both technical input and to address any compliance requirements. The value of this approach to cultural resource management is that resource significance is not determined in isolation but within the entire context of the landscape and interrelationships among its components. The approach may allow greater flexibility in environmental impact analysis and the development of mitigative strategies in terms of trade-offs that may be negotiated when the linkages between cultural and natural resources are clearly identified. The approach also allows for more informed and defensible decision-making that considers the entirety of resources within their setting.

2–3. ICRMP preparation guidelines

a. All installations should prepare an ICRMP unless they receive a variance from HQDA IAW AR 200-4. Cases where such a variance can be granted include, but are not limited to—

(1) Installations that have completed cultural resources inventories and documented that no cultural resources exist. Such documentation should include consultation of such findings with appropriate agencies and organizations (that is, SHPO, Indian tribes, NPS).

(2) Installations that can document that cultural resources are unlikely to exist on the installation because of recent age or disturbance, and that have completed consultation IAW NHPA Section 106 and or NAGPRA, as appropriate.

(3) Installations that have limited cultural resources or where resources are managed under other agency plans may be able to meet their cultural resources requirements without an ICRMP. In this situation, an installation must identify cultural resources regulations that apply to it and certify that these requirements can be met through means other than an ICRMP.

(4) Installations with an existing plan (Cultural Resources Management Plan [CRMP] and or a Historic Preservation Plan [HPP] developed IAW AR 420-40) that was prepared less than 3 years prior to the effective date of AR 200-4 need not prepare an ICRMP until the 3-year point is reached. If an HPP or CRMP is 3 years old or older from the publication date of AR 200-4, an ICRMP is required.

b. Integration of the ICRMP into the installation planning process.

(1) ICRMPs are a component plan to the installation Master Plan and should be prepared in conjunction with—

(a) Master planning (installation development and land uses),

(b) Natural resources management (Integrated Natural Resources Management Plans),

(c) Training management (Integrated Training Area Management and range management programs),

(d) Real property planning, including facilities, housing, and

(e) Installation operations and maintenance activities.

(2) Planning level survey information and elements of the cultural landscape analysis should be entered into any available Geographic Information System (GIS) as components of the ICRMP.

c. ICRMPs should be developed to meet the needs of an installation and be implemented by the appropriate level of NEPA documentation. According to AR 200-4, it is recommended that an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) be prepared to support and implement the ICRMP. If surveys and inventories have not been performed or completed, the ICRMP should be developed to detail how the installation will meet its compliance needs while accomplishing the necessary inventories. In cases where installation inventories have been completed or are underway, the ICRMP should include information from these inventories and address any impacts to known resources.

d. All efforts to develop and implement the ICRMP should be conducted under the supervision of an individual who meets the applicable professional qualification standards set forth in 36 CFR 61, appendix A.

2–4. ICRMP format

The following summarizes development of major sections of the ICRMP. These are recommendations, installations are expected to utilize these recommendations in terms of their specific applicability and situation.

a. Executive summary. The executive summary reviews the plan's major components and findings. This section should be relatively short; written in a simple, easy to understand style, and formatted in such a way that it can be extracted for general distribution.

b. Introduction. The introduction defines the installation's mission and summarizes its history. The summary is intended to be short and not a comprehensive essay. At a minimum, it should identify the major historical events that are associated with the installations landscape development.

c. Statutes and regulations.

(1) This section should provide a brief overview of the basic requirements of each applicable cultural resources statute, Executive Order, Presidential memoranda, and regulation, or may simply incorporate the overview by reference to AR 200-4, chapter 2. In some cases, other Federal agencies have statutory or regulatory oversight on lands used by the Army. Any lease, license, or land use agreement that would affect the installation cultural resources program should be identified in the ICRMP. If there are questions regarding leased or licensed lands, the installation staff judge advocate (SJA) should be contacted.

(2) State and local cultural resources laws and regulations do not apply to Army property because there has been no waiver of sovereign immunity in this area. If there is a question about the applicability of a State or local requirement to the installation's cultural resources program, the installation SJA should be contacted.

(3) On overseas installations, host nation laws, Final Governing Standards, and negotiated agreements and treaties may apply. The ICRMP should address these requirements rather than United States laws and regulations. It is noted, however, that NHPA Section 402 in the Addendum to the 1980 amendments (16 USC 470a-2) applies to Army actions occurring outside the United States. That section states that prior to the approval of any Federal undertaking outside of the United States which may directly and adversely affect a property on the World Heritage List, or on the applicable country's equivalent of the National Register, the head of a Federal agency having direct or indirect jurisdiction over such undertakings shall take into account the effect of the undertaking on such properties for the purposes of avoiding or mitigating any adverse effects.

d. Planning Level Survey. A Planning Level Survey includes a literature review, site and map file searches to determine the range and types of resources that may be or are known to be present, development of archeological sensitivity assessments or predictive models, and historic contexts. Existing inventory results, including National Register eligibility, should be summarized in the planning level survey in addition to agencies, Indian tribes and other organizations that must be consulted for compliance purposes. Development of GIS data layers to support the cultural landscape analysis may be part of the planning level survey. The following exemplify the kinds of issues installation managers should consider while developing a cultural landscape analysis as part of a planning level survey:

(1) Mission—

(a) The past mission(s) of the installation.

(b) The current mission(s).

(2) Chronological Period:

(a) Prehistoric and historic themes or contexts are represented as resources components of the landscape.

(b) Events were taking place during the establishment of the installation.

(c) Installation relationship to prior and subsequent historical events and themes.

(3) Geography:

(a) Geographical factors influence on human land use patterns prior to and during Army use of the property.

(b) Resource factors influence on patterns of land use including; terrain, ecological factors (species and populations [natural, feral, and domestic]), habitats and biotic communities, ecosystems, soils and surface geology, water resources, human influences (prehistoric, historic and military land uses).

(c) Connections between the past and present land uses and the installation's geographic setting and landscape.

(d) Physical geography and resource factors influences on the design, planning, and location of prehistoric, historic, and military settlements and activity areas.

(e) Geographic characteristics prior to the establishment of the installation, and changes during the installation's development (that is, fill areas, excavation, population increases, cantonment and training area development, transportation routes, relationship to nearby towns).

e. Cultural Resources Inventory.

(1) The results of the planning level survey are operationalized through the actual field effort, that is, the "inventory", to locate and identify cultural resources. Disclosure of specific archaeological site locations, historic properties and traditional cultural properties, and Native American sacred sites are protected from disclosure and should not be included in the ICRMP however, these and related disclosure issues do need to be addressed in the ICRMP. Such disclosure protections are in NHPA Section 304, ARPA Section 9, and EO 13007 Section 1.

(2) An inventory schedule should be developed to address NHPA undertakings, other compliance requirements, and for the development of a baseline inventory for management purposes. Installation undertakings and other activities that may affect cultural resources over the 5-year period of the ICRMP should be identified and prioritize if at all possible.

f. Management Plan.

(1) The ICRMP's management plan addresses the cultural resources requirements of the installation activities discussed in the previous section. This part must address the internal installation coordination and consultation procedures, and define standardized treatment measures for cultural resources. Consideration should be given to the role that the public affairs officer, legal counsel, commanders, and supervisors have in the process. Required coordination and consultations that may impact the mission must be identified as a priority and addressed early to avoid impacts to readiness.

(2) External consultation and coordination should be detailed in the management plan. The procedures for involving the MACOM and Headquarters, Department of the Army (HQDA), IAW AR 200-4, in the review process should be identified as well as coordination and consultation with outside agencies, Indian tribes, and the public, as specified in the applicable statute, regulation, or Executive Order.

(3) Standing operating procedures (SOPs) It is imperative that the plan's management section clearly identify how the installation will address the cultural resources issues related to proposed or planned installation activities through SOPs for actions on a project-by-project basis or by grouping the projects by priority and type of activity.

(a) SOPs are written for installation staff. They should be in a easy to use format, identify routine recurring activities, and list specific procedures based on those established in the plan or program.

(b) This section should also identify repetitive or routine actions that occur as a part of normal installation activity and how the installation will address cultural resources compliance for each routine action. Actions relating to the NHPA or NAGPRA compliance can be developed in the SOP so they may be removed and incorporated into agreement documents to streamline the compliance process.

(c) This section should also contain standard procedures for inadvertent discovery of cultural resources, for emergency actions that could affect cultural resources, and standard treatment measures for cultural resources such as historic buildings and structures.

g. Economic analysis.

(1) AR 200-4 specifies the installation requirement to conduct an economic analysis of historic buildings and structures that are being considered for demolition and replacement. The NHPA requires that historic properties be considered for re-use to the maximum extent feasible before disposal. The decision to re-use, replace, or demolish a facility needs to be justified with a least cost, life-cycle economic analysis.

(2) The ICRMP should outline the procedures to be used in conducting the economic analysis and identify the offices involved in the review process. The ICRMP should state that when the economic analysis demonstrates that rehabilitation costs exceed 70% of the building's replacement cost, replacement construction may be used. However, the 70% value may be exceeded where the significance of a particular historic structure warrants special attention, or if warranted by the life-cycle cost comparisons. The ICRMP must specify that the assessment of new construction must evaluate life-cycle maintenance cost, utility costs, replacement costs, and other pertinent factors. Replacement costs should not be based on replacement in kind, but should be based on a design that is architecturally compatible with the historic property. If the building to be disposed of is a historic property, potential reuses of the building must be analyzed prior to making the final decision to dispose of the property.

h. Public Involvement Plan. Several cultural resources statutes and regulations require public and Indian tribe or Native Hawaiian participation in the compliance process. The ICRMP should include a public involvement plan and address issues such as timing and specific individuals or parties that should be contacted, and involvement of interested parties. Public involvement plans for cultural resources should be incorporated to maximum extent possible with the public involvement requirements of NEPA. Integrating public involvement requirements into a single plan can result in significant time and cost savings. Such plans should be developed and implemented with the installation's Public Affairs Office.

2–5. General considerations in ICRMP preparation

a. The ICRMP must be a usable document that is implemented by supporting NEPA documentation. IAW AR 200-4, an Environmental Assessment (EA) is the recommended level of NEPA documentation for an ICRMP. The ICRMP must realistically consider mission requirements. It should be in a format that is understandable and accessible. The ICRMP must consider plans developed through other installation planning documents and activities. The cultural landscape approach provides a means for integrating cultural resources requirements into those plans through its comprehensive approach and integration through mylar overlay maps or a GIS system. The ICRMP must address impacts to known or anticipated cultural resources or determine a workable plan to identify these resources for later consultation. The schedules developed in the ICRMP must be realistic and address mission requirements.

b. The ICRMP can be used to develop language that can be included in other planning documents and compliance agreements. This helps to incorporate cultural resources requirements into other programs, documents, and management plans (for example, Integrated Natural Resource Management Plans, Endangered Species Management Plans, Grazing Plans, and Timber Harvesting Plans). Model language can include standard specifications for certain contract activities (for example, incorporating the consultation process into contracts) or discovery clauses for archaeological resources. ICRMPs should identify methods by which cultural resource compliance requirements can be integrated or streamlined. For instance, the NHPA Section 106 process can be tailored by using a Programmatic Agreement (PA), likewise NAGPRA Section 3 requirements may be streamlined by developing a Comprehensive Agreement (CA). Installations should include in the ICRMP references to, or directions from, existing streamlined procedures if a PA or CA has already been implemented. The ICRMP should identify compliance actions and procedures to facilitate extracting this information for incorporation into a PA or CA.

c. ICRMPs can be completed by in-house staff who meet professional qualifications as defined in 36 CFR 61, or by other sources of labor who meet those same qualifications. It is recommended that in-house assets prepare the ICRMP because of their familiarity with the details of installation specific operations, procedures and coordination requirements, and to avoid the use of "stock" information from contractors. If the ICRMP is developed by contract or other type of agreement, it is recommended that the installation's standing operating procedures section of the plan be developed by in-house staff. Completing an ICRMP can be time consuming and sometimes requires several types of professional expertise. If the document is prepared by contract or agreement, the installation should provide copies of planning documents to the preparer for use in the ICRMP development process.

d. Regardless of who prepares the ICRMP, installation personnel must make sure that the document meets ICRMP requirements set forth in AR 200-4 and this pamphlet, while addressing mission requirements.

(1) Initial preparation.

(a) Prior to beginning an ICRMP, an installation personnel should compile all relevant information available that could contribute to the ICRMP. This would include real property listings, installation history, installation maps, planning documents, previous cultural resources survey reports, GIS data, Environmental Compliance Assessment System audits, etc. Having this information available will facilitate the initial steps of ICRMP development, especially if the work is being done by contract.

(b) It is also important, at this time, to begin assembling a team representing the installation offices that may be affected by, or can assist in the development of the plan. These include public affairs officers, legal counsel, engineers, military trainers and testers, etc. The list will vary by command and installation. The team should be assembled and briefed on the requirements and objectives of developing the ICRMP and each representative should be encouraged to make sure their concerns and requirements are mentioned.

(c) In accordance with AR 200-4, the MACOM has the responsibility for review of the ICRMP. The MACOM review also considers whether or not the installation is setting precedents that may have implications for other installations in the command.

(d) HQDA (AEC) can provide assistance for issues that have Army-wide implications or where the coordination with, or assistance from other services or Federal agencies is needed. HQDA (AEC) can also coordinate a HQDA technical, policy, and legal review of ICRMPs if the installation or MACOM so requests.

(2) Timelines for completing an ICRMP are highly variable. Factors that affect the timeline include size of the installation, age of the installation, magnitude of resources and issues.

(3) MACOM and other review comments need to be addressed to the fullest extent possible given time and resources. Comments that cannot be incorporated into the ICRMP without adverse impacts to the mission or other installation activities should be discussed as soon as possible with the reviewer and with those installation offices and activities that would be directly impacted. Review process documentation, comments, and issues resolution should be kept at the installation until resolution.

(4) The ICRMPs are developed to cover a 5-year period. In certain cases, the ICRMP should be re-evaluated prior to the 5-year review point to determine if it still meets mission requirements. Some events that may trigger a re-evaluation of the ICRMP include—

(a) Significant Federal actions (for example, change in mission, Base Realignment and Closure).

(b) Deficiencies resulting from an environmental audit (according to AR 200-1).

(c) A significant increase in the number or percentage of completed surveys.

(d) Change in or exception to HQDA policy.

(e) New or revised Federal statute, regulation, Executive Order, or Presidential Memoranda.

(f) Addition of new resource types or categories (for example, cantonment area reaches 50-year period or exceptionally important Cold War resources are identified).

2–6. Guidelines for the Cultural Resources Component of Integrated Natural Resources Management Plans

a. Natural resources management activities may involve ground disturbance and can present the potential for adverse impacts to cultural resources. The following guidance addresses areas within an

installation Integrated Natural Resources Management Plan (INRMP) where cultural resources issues should be included if a truly integrated management plan is desired. These guidelines focus on three areas; cultural resources compliance requirements that are generated as a result of ecosystem management activities, contributions that cultural resources studies can make to ecosystem management decisions, and human activities including those practices by Native Americans that should be supported and sustained in development and implementation of an ecosystem management plan.

b. Compliance. Cultural Resources compliance requirements associated with ecosystem management activities may be generated under the, National Environmental Policy Act (NEPA), National Historic Preservation Act (NHPA), the Archeological Resources Protection Act (ARPA), and the Native American Graves Protection and Repatriation Act (NAGPRA), American Indian Religious Freedom Act (AIRFA) and EO 13007.

(1) The compliance requirements of these statutes, their associated implementing regulations, and Executive Orders should be considered throughout an INRMP rather than included as a single short section on cultural resources. Although the requirements of Section 106 NHPA are typically mentioned in the "Cultural Resources" section of INRMPs, this section should indicate that there are other requirements as referenced above that would impact the INRMP implementation.

(2) The INRMP should specify the types of natural resources management activities that may require Section 106 consultation. For example, all ground disturbing activities associated with forest management (harvesting, plowing and planting for regeneration), habitat management (physical soil preparation for food plots, cover plantings, pond and wetland construction, cantonment area management (historically appropriate landscaping may be an issue if the cantonment area is a historic district), soil surveys, land rehabilitation and maintenance (terrain modification for erosion control and restoration), and agricultural outleasing (plowing) all may trigger cultural resources compliance requirements. Similar guidance should be provided for NAGPRA, ARPA, and AIRFA.

c. Contributions. Data recovered from archeological site excavations on the installation and nearby locations pertaining to floral and faunal remains, and pollen analysis can provide installation ecosystem managers with direct and highly relevant information regarding native plant and animal species, native plant and animal communities, changes in native plant and animal communities through time, and past human relationships with and modifications to biotic communities, climate change, and the landscape and ecosystems. If an emphasis of ecosystem management is to maintain and improve native biological diversity, archeological data that directly pertain to native biodiversity should be used, if available, to ensure that there is a historical basis for determining what is actually "native" and what should be sustained. The INRMP should provide for analysis of these data in the section on Physical Natural Resources and Climate. Additionally, information from archeological and historical data (such as historical photographs), should be utilized to assist in determining what past human activities occurred and have modified what may appear as a "natural" or "native" ecological unit.

d. Human Activities. The following discussion also applies to the Compliance section above. Under AIRFA, Federal agencies are required to allow Native Americans reasonable access to lands that contain sacred sites. EO 13007, "Indian Sacred Sites" reaffirms this statute and adds the additional requirement that the Army avoid adverse effects to the "physical integrity" of sacred sites and to ensure reasonable notice is provided to Indian tribes when land management policies may restrict future access or adversely affect sacred sites. These requirements should be a significant element of INRMPs on installations where such sacred sites exist.

(1) Indian sacred sites can include topographical features of the natural environment, past occupation sites (archeological sites), burial areas, building ruins, plant, animal and mineral gathering areas, and spirit sites such as caves or other geological structures which may be indistinguishable from the surrounding natural environment. A number of Army installations have sacred sites.

(2) INRMPs should recognize that modification to terrain and changes to plant species composition in sacred site areas could significantly impact the sacredness of the locality, and could therefore adversely affect Indian religious practices and require actions to comply with EO 13007 and NHPA. Additionally, for installations that have known Native American sacred sites and plant, animal and mineral gathering localities, the INRMP and ecosystem management program should recognize these areas and support and sustain the human activities associated with them. Management of plant and animal communities and other natural areas that are associated with traditional beliefs or utilized in traditional Native American practices should focus on how the area and resources can be integrated into the overall ecosystem management plan in a manner that sustains and enhances this human activity.

2–7. Funding and cooperative agreements for cultural resources

a. The "Policy and Guidance for Identifying U.S. Army Environmental Program Requirements," establishes cultural resources programming policy for identification of specific actions or projects requiring funding. Installations identify and document all current and projected cultural resources requirements in the installation Environmental Program Requirements (EPR) report submission. The EPR report should be used as a tool to plan and forecast all cultural resources costs for compliance and management purposes over the planning cycle.

b. MACOMs must identify requirements and plan for execution consistent with the timelines of the Planning, Programming, Budget and Execution System (PPBES). The EPR Report is used to develop and support the Program Objective Memorandum (POM), which identifies resources 2 to 7 years beyond the current year. The EPR report is used by HQDA to review budget submissions, and to plan, program, defend and justify resources needed to execute the Army environmental program.

c. Special considerations associated with acquiring funds through the EPR process include—

(1) Program out-year requirements to ensure future funds are available for projected requirements over a 5-year funding cycle.

(2) Misclassification of projects. Projects classified as Class 1 or Class 2 High should specify the statutory or regulatory compliance date in the narrative unless a priority has been provided by Army policy.

(3) Closely relate project narratives to legal requirements and provide information such as numbers of buildings or acres to be inventoried to allow for adequate review.

(4) Identification of compliance agreements as generating a requirement with established deadlines should include the actual deadline dates.

d. Funding hints.

(1) Since end-of-the-year funds often become available at the last minute, it is helpful to have the groundwork for any partnerships, interagency cooperation, contracting, permitting, consulting, etc., completed in advance and identified as an unfunded requirement.

(2) Programming funding for future years is essential. Use the Master Plan and other similar documents in combination with the ICRMP to help identify out-year requirements.

(3) Funding for cultural resources management should be accomplished through regular programming and budgeting channels.

e. Cooperative Agreements for Management of Cultural Resources on Installations. The Defense Authorization Act of 1997, Section 2862, provides the Secretary of the Army the authority to enter into cooperative agreements with State or local governments, or other entity for cultural resources activities. This allows installations to enter into cooperative agreements with such entities as the SHPO, National Trust for Historic Preservation, Indian tribes, private preservation groups, or any State or local governmental entity for the preservation, management, maintenance, and improvement of cultural resources on military lands and for the conduct of research regarding cultural resources. Requirements are detailed in AR 200-

4, paragraph 3-4. Signature authority for such cooperative agreements has been delegated to the installation commander by authority of AR 200-4.

2–8. Cultural Resources Program Participants

a. Participants in managing cultural resources include the following:

(1) Department of the Army.

(a) Office of the Director of Environmental Programs—carries out the ACSIM Army Staff function for the Army's Cultural Resources Management Program.

(b) USAEC—An ACSIM Field Operating Activity, responsible for a broad range of technical support and oversight services to HQDA, MACOMs and installations for execution of the Army Cultural Resources Management Program.

(c) MACOM—serves as a primary point of contact for installation requirements.

(d) Installation.

1. Cultural Resources Manager—as appointed IAW AR 200-4, provides day-to-day management for cultural resources, helps ensure that all installation activities are in compliance with applicable cultural resources requirements, serves as a liaison between all persons involved in the ICRMP; writes the ICRMP or develops its Statement of Work; and implements the ICRMP.

2. Directorate of Installation Support (DIS), or Directorate of Public Works (DPW).

- Master planner—Should have the ICRMP as a component plan within the installation Master Plan and Design Guide.
- Engineers—should include time schedules for cultural resources consultation in their project design and delivery schedules.
- DPW maintenance shops—are responsible for doing minor maintenance and repairs to installation property. Both the shops and work order section should have the current inventory of cultural resources, and should use the appropriate standards and techniques established for maintenance and repair of historic properties.
- Utilities—may have a permitting system established for anyone who wants to dig on the installation. The cultural resources manager may review digging plans submitted to them or provide them with an inventory and map of all known archaeological sites.

3. Resource Management Office—is responsible for the financial management and accounting for the installation's funds. They will track any cultural resources funds and are a source of information on funding.

4. Contracting Office—They will give advice on spending funds to accomplish the cultural resources program. The Contract office should be made aware of any legal requirements or agreements for cultural resources to ensure that contracts are consistent with those requirements.

5. Staff Judge Advocate (SJA)—will review MOAs, PAs, CAs and any other legally binding cultural resources documents for legal sufficiency. They may also interpret the various laws and regulations related to cultural resources management.

6. Land and Natural Resource Managers—may provide background information concerning sites, environmental and geographic factors, surface disturbance, access, vegetation, wildlife, endangered species, wetlands, and other resources.

7. Directorate of Plans and Training, and Range Control—allocate and schedule the use of installation training lands to units for field exercises. They should have the current inventory of cultural resources found on the training lands and should be provided information on any agreement documents the ICRMP, CAs and pertinent regulations that could impact training.

8. Real property office—may be able to provide much of the data needed to determine if a building or group of buildings is eligible for the National Register and should be provided information on historic properties.

9. Unit Historical Officer—may assist in locating background information on military activities.

10. Museum Curator—if present, may provide information concerning the installation, corrections, and records. This person also develops and preserves properties associated with the Army's military history. If an installation museum exists and meets the requirements of 36 CFR 79, those facilities may be used for archeological artifact curation (see AR 870-20).

11. Public Affairs Office—may help locate historic information concerning sites or activities and may assist in developing interpretive programs. The public affairs office may also assist in promoting the ICRMP to the public and the installation.

(2) Non-military participants/regulatory agencies.

(a) SHPO—Provides views regarding the installation's Section 106 review process but does not have an approval authority over proposed actions or products. The SHPO, in a non-regulatory role, may be kept informed of other ICRMP activities and can be good source of technical information.

(b) Advisory Council on Historic Preservation (ACHP)—has a consultation role in Section 106 NHPA compliance, may assist in preparing NHPA agreements or advising on NHPA compliance requirements. Has a review and comment role in the Section 106 process and issues notices of noncompliance (termed a "foreclosure") with the NHPA. The ACHP can provide technical assistance and a national preservation perspective.

(c) Departmental Consulting Archeologist, National Park Service, has a role in NAGPRA IAW 43 CFR 10.

(d) Keeper of the National Register, determines the eligibility of historic properties for the National Register, resolves disputes between the installation and SHPO regarding eligibility of historic properties, and has the authority to list historic properties in the National Register of Historic Places and to delist such historic properties.

(e) Federally recognized Indian tribes and Native Hawaiian Organizations have a role in NHPA and NAGPRA compliance actions in terms of review and comment, but they do not have an approval authority over proposed actions or work products. Some tribes have been certified by the NPS to act as the SHPO on reservation lands.

(f) Interested parties/public—those organizations and individuals that are concerned with the effect of an activity on cultural resources and may be identified through the NEPA compliance process.

b. Once the roles and responsibilities are established, there are opportunities to tailor the compliance process to installation operations and minimize impacts to the mission. PAs, under Section 106 of the NHPA, are a good tool that can be used to tailor NHPA compliance to installation specific situations. CAs under NAGPRA can help minimize or avoid mandatory 30-day shutdown periods where human remains may be discovered. Guidelines for NHPA PAs and NAGPRA CAs are in appendix C and E respectively. The critical key to managing an effective cultural resources program is consulting early in project planning and maintaining open lines of communication with other involved entities.

Chapter 3
Cultural Resources Compliance Requirements

3–1. Army Cultural Resources Management Program

a. The Army's Cultural Resource Management Program and the planning strategy in chapter 2, is developed in response to the numerous cultural resource specific statutes and regulations and the need to operationalize those requirements without effecting the mission. This chapter provides an overview of the legal requirements and topical issues associated with applicable Federal statute, regulation, Executive Order and Presidential Memoranda.

b. Army Regulation 200-4 establishes the basic Army policy for cultural resource management and compliance actions.

c. The Army defines cultural resources as historic properties as

defined in the NHPA, cultural items as defined in the Native American Graves Protection and Repatriation Act, archeological resources as defined in the Archeological Resources Protection Act, sacred sites as defined in Executive Order 13007 to which access is provided under the American Indian Religious Freedom Act, and collections as defined in 36 CFR 79 Curation of Federally-Owned and Administered Collections.

3–2. National Environmental Policy Act

a. The National Environmental Policy Act (NEPA) established a decision-making process that provides for the systematic consideration of alternatives and examination of the direct, indirect, and cumulative environmental impacts associated with implementation of a proposed action. Typically, Army activities or actions that impact a cultural resource will require some level of NEPA documentation in addition to the separate documentation and compliance requirements of the applicable cultural resources statute or regulation.

b. The objectives of NEPA are—

(1) To ensure that a decision maker makes a fully informed decision by considering all relevant environmental consequences and public comments and concerns before committing resources to carry out a proposed action.

(2) To inform the public and provide for the public's participation in the decision-making process.

c. While NEPA's more detailed documentation requirements (that is, the Environmental Assessment (EA) and Environmental Impact Statement (EIS)) will not apply to all Army actions involving cultural resources, NEPA's applicability should be considered at the beginning of project planning.

(1) The applicability of NEPA and level of documentation necessary will be determined by considering several factors, including the following:

(a) The type of action proposed.

(b) Whether the action is covered by pre-existing NEPA analysis or a published categorical exclusion (CX).

(c) The type and level of impacts expected, if any.

(d) The sensitivity of the resources or issues involved.

(2) While the NEPA process provides an avenue to facilitate compliance with other statutory and regulatory requirements (for example, NHPA, NAGPRA, ARPA, AIRFA), its applicability must be considered independently of these other requirements. Compliance with NEPA does not satisfy these other applicable requirements, nor does compliance with other applicable requirements satisfy NEPA's mandates. Compliance processes under the NHPA and NAGPRA should be scheduled concurrently with the NEPA process to allow full integration of all relevant data. A final NEPA decision document (that is, FONSI or ROD) should not be signed until completion of these related compliance processes because each process is designed to focus on resource specific impacts which are necessary in reaching a fully informed decision.

d. The following framework should be applied in determining whether NEPA applies to a proposed action dealing with cultural resources, and if so, at what level (that is, CX, EA, EIS):

(1) If the proposed action will not have any conceivable impact on the physical human environment, NEPA does not apply.

(2) If the proposed action may have an impact on the human environment, but the impacts have been accounted for in a pre-existing NEPA document, a Record of Environmental Consideration (REC) should be prepared and the action implemented without further NEPA analysis.

(3) If subparagraphs 2-2d(1) and (2) do not apply, appendix A to AR 200-2 should be reviewed to determine, after application of the Screening Criteria, whether a published CX applies to the proposed action. If so, a REC should be prepared documenting the decision to use a CX. Most activities affecting cultural resources can not be categorically excluded as a result of the Screening Criteria published in appendix A, A-31 of AR 200-2.

(4) If subparagraphs 2-2d(1) through (3) do not apply, it is likely that the proposed action is a "major" Army action that must be evaluated to determine whether projected environmental impacts will be "significant." This is done in the following manner:

(a) The proponent of the action may prepare an EA to consider the proposed impacts. If the EA discloses that the impacts will not be significant, then the proponent will document and publish that conclusion in a Finding of No Significant Impact (FONSI). The types of activities affecting cultural resources that would normally require an EA include but are not limited to:

1. Development and implementation of an ICRMP.

2. Renovation, rehabilitation, or demolition of a building or structure listed or eligible for listing in the National Register of Historic Places.

3. Projects that could impact or effect cultural resources (as defined AR 200-4).

(b) If the EA indicates that the proposed action will present significant impacts to a physical element of the human environment, then the proponent must proceed with preparing an EIS, which is initiated with publication of a Notice of Intent (NOI) to prepare the statement.

(c) If the proponent anticipates from the outset that the proposed action is of such magnitude that impacts are likely to be significant, the proponent can choose to forego preparation of an EA and proceed directly to publishing the NOI and preparing the EIS. The types of activities affecting cultural resources that may require an EIS include but are not limited to:

1. Demolition of a National Historic Landmark, or any part thereof, without mitigative measures.

2. Other unmitigated cultural resource-disturbing activity of severe adverse magnitude.

e. In determining the scope and level of NEPA documentation applicable to a proposed action, pre-existing NEPA documentation that may be relevant to the proposed action should be reviewed. Where such documentation does exist, a proponent may be able to reference and incorporate the pre-existing data and analysis. By referencing or tiering (as it is commonly known under NEPA) in appropriate circumstances, a proponent may decide to prepare a supplemental EA rather than an EIS, or a REC rather than an EA.

3–3. National Historic Preservation Act

a. The National Historic Preservation Act (NHPA) established the Federal Government's policy on historic preservation, as well as the national historic preservation program through which that policy is implemented. NHPA created a Federal system for identifying and registering "historic properties," established a Federal-State partnership to promote the preservation of such properties, and gave Federal agencies responsibility for considering such properties when planning their actions.

(1) NHPA defines historic property as any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on the National Register of Historic Places, including artifacts, records, and material remains related to such a resource.

(2) A "traditional religious and cultural property" is a special type of historic property that is eligible for inclusion in the National Register because of the location's traditional religious and or cultural importance to an Indian tribe or Native Hawaiian organization.

b. NHPA created the Advisory Council on Historic Preservation (ACHP or Council) to advise the President and Congress on historic preservation matters and to review Federal and federally assisted actions affecting historic properties. NHPA also provided for each governor to designate a State Historic Preservation Officer (SHPO) to participate in the national program. Finally, NHPA created the National Register of Historic Places, a list of historic properties important to the Nation, to the States, and to local communities that is maintained by the Keeper of the National Register under the National Park Service (NPS).

c. Federal agency responsibilities are outlined in the following sections of NHPA:

(1) Section 106 requires the consideration of effects on historic properties and ACHP comment on undertakings. Federal agencies comply with Section 106 by following the regulations issued by the Council under its rule-making authority (NHPA Section 211). The

regulations, "Protection of Historic Properties" (36 CFR 800), outline a five-step process, often called the "Section 106 process," that is designed to identify possible conflicts between historic preservation objectives and a proposed activity and to resolve those conflicts in the public interest through consultation. Neither the NHPA nor the Council's regulations require that all historic properties must be preserved. They only require the Army to consider the effects of proposed Army undertakings on historic properties. Appendix B contains procedures for compliance with 36 CFR 800. (Note: 36 CFR 800 is currently under revision and the procedures in appendix B will be superseded upon issuance of the final revised 36 CFR 800 regulation). Appendix C contains guidelines for NHPA PAs. The first PA guideline is for ongoing installation operations and the second PA guideline in appendix C is a Prototype PA for Base Realignment and Closure Program (BRAC) installations with recommended standard covenants for historic properties that will be transferred out of Army ownership.

(2) Section 110 identifies general agency responsibilities with respect to historic properties and is intended to ensure that historic preservation is integrated into the ongoing programs of Federal agencies. Army implementation of AR 200-4, DA PAM 200-4, and installation specific actions and plans for NHPA Section 106 compliance and historic property management help satisfy this general requirement. Section 110 requires Federal agencies to:

(a) Assume responsibility for preserving historic properties owned or controlled by the agency in a manner consistent with the mission, including the identification, evaluation and nomination of historic properties for listing in the National Register of Historic Places.

(b) Use, to the maximum extent feasible, historic properties.

(c) Ensure that historic properties subject to damage or other alterations are documented prior to such alteration.

(d) Carry out program and projects that further the purpose of the NHPA.

(e) Undertake, to the maximum extent feasible, such planning and actions as may be necessary to minimize harm to any formally designated National Historic Landmark (NHL). The installation should consider all prudent and feasible alternatives to avoid an adverse effect to a NHL. Where such alternatives appear to require undue cost or compromise the goal and objectives of the action, the installation must balance those goals and objectives with the intent of NHPA Section 110(F). In so doing, the installation should consider the magnitude of the proposed actions harm to the NHL, level of public interest, and the effect that a mitigation action would have on meeting the objectives of the proposed action.

(f) Although there are no regulations to implement Section 110, the Secretary of the Interior and the ACHP have issued nonregulatory guidelines for complying with Section 110.

(3) Section 111 addresses leases and exchanges of historic properties. Section 111 allows the proceeds of any lease to be retained by the agency to defray the costs of administration, maintenance, repair, and related expenses of historic properties. It also makes explicit the affirmative responsibility for Federal agencies to establish and implement alternatives for historic properties, including adaptive use, that are not needed for current or projected agency purposes.

(4) Section 101.

(a) This section provides federally recognized Indian tribes who have had their historic preservation programs approved by the Secretary of the Interior with the ability to assume SHPO NHPA functions for tribal lands (that is, for all lands within the exterior boundaries of any Indian Reservation and all dependent Indian communities.) This provision does not apply to aboriginal homelands if outside of the exterior Reservation boundaries, or to ceded lands. Such Indian tribes with approved programs may have tribal historic preservation regulations that serve in place of 36 CFR 800 for review of any Army undertakings on tribal lands.

(b) Additionally, in carrying out Section 106 responsibilities, Section 101 also requires that the installation commander consult with any federally recognized Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to a property being considered in the Section 106 process. Such consultation must be on a government-to-government basis. Additionally, installation commanders should initiate such consultation for the identification and evaluation of properties of religious and cultural importance.

(5) Section 402 prescribes Federal agency responsibilities for historic properties in other nations and requires the head of the Federal agency to take into account the effect of an undertaking on property that is on the World Heritage List or on the applicable country's equivalent of the National Register to avoid or mitigate any adverse effect. This effort must be done prior to approval of an undertaking that may directly and adversely affect such property. Installations located in a host nation should—

(a) Obtain the World Heritage List and host nation register and determine if any such properties are present within their jurisdiction.

(b) Develop internal review procedures to determine if undertakings will cause an adverse effect to historic properties.

(c) Develop and implement measures to avoid or mitigate adverse effects caused by Department of Defense (DOD) undertakings.

(d) Notify the appropriate host nation when a potential historic property is discovered during the course of a DOD action.

(6) Section 304 calls for withholding from public disclosure information on the location, character, or ownership of a historic resource where such disclosure may cause an invasion of privacy, risk harm to the property, or impede the use of a traditional religious site by practitioners.

d. Special Topics in NHPA Compliance.

(1) WW II Era historic buildings

(a) Status of WW II Era temporary buildings:

1. A nation-wide Programmatic Agreement (PA) executed by DOD in 1986 stipulated the documentation of representative types of WWII temporary buildings and structures according to Historic American Buildings Survey/Historic American Engineering Record (HABS/HAER) standards. This comprehensive documentation effort serves as mitigation for the demolition of all WW II era temporary buildings. The PA was national in scope and addressed the entire category of WW II temporary buildings.

2. The documentation effort to meet the terms of the PA has been completed. The Army may proceed with demolition of WWII temporary buildings without restriction. No further consultation with the ACHP or SHPO, or any further documentation of WW II temporary buildings is required prior to demolition.

3. Although demolition of all WWII temporary buildings may proceed without any restriction, many WW II temporary buildings are extant and in use by the Army. The WW II PA does not cover undertakings other than demolition. Therefore, activities such as renovation and rehabilitation are undertakings that need to be considered under Section 106 of the National Historic Preservation Act (NHPA). Given the PA and extensive HABS/HAER documentation that exists for these temporary buildings, rehabilitation and renovation actions should not warrant any additional HABS/HAER documentation.

(b) WWII semi-permanent and permanent properties are not addressed by the WW II Temporary buildings PA and therefore need to be identified and evaluated for eligibility for the National Register of Historic Places if a Section 106 undertaking is planned that would effect such buildings. If properties are determined eligible, Section 106 of NHPA and 36 CFR 800 procedures must be fulfilled.

(2) Cold War Era Historic Properties.

(a) The Cold War era extends from the "Iron Curtain" speech of Winston Churchill in 1946 to the fall of the Berlin Wall in 1989. Properties that can attribute significance associated with this period are considered under the National Register Criteria of Exceptional Importance.

(b) The Criteria of Exceptional Importance is applied to properties that are less than 50 years old to evaluate the National Register eligibility pursuant to 36 CFR 60.4. A Cold War property may have significance under National Register criteria A-D, due to association with major historical events or persons, technological or scientific

design achievement, or as a fragile survivor of a class of properties. The significance of Cold War era properties may lie at the national level in association with military themes directly tied to the Cold War, or at the State or local level under other themes.

(c) Examples of properties that should be evaluated for National Register eligibility in the military Cold War theme under the criteria of exceptional importance may include but not be limited to facilities associated with; nuclear weapons, research and development laboratories, testing and proving grounds, manufacturing, storage and maintenance sites. These types may represent the direct link between the U.S. commitment to defend its territory against Soviet expansion.

(d) By contrast, base operations property types such as motor pools, administration buildings and housing are not normally types that would be considered exceptionally important under a nationwide military Cold War theme since they were merely built during the Cold War era as part of the everyday operation of the Army and are not directly associated with the Cold War in strategic or tactical terms. However, such property types, in certain instances may have had such an exceptional impact on a State or locality that they could be eligible for the National Register under other State or local themes. In Alaska for example, the military buildup after 1946 became the single largest economic activity in the State until the 1970s.

(3) Base Realignment and Closure Program (BRAC).

(a) A BRAC installation is one that will be realigned, closed or transferred through the BRAC process. Any of those actions, realignment, closure or transfer, constitutes an undertaking that may affect historic properties.

(b) Compliance with Section 106 and other applicable laws and regulations must be completed, or the terms of any NHPA PA or MOA must be fulfilled, before the BRAC action is completed. A thorough identification and evaluation of cultural resources needs to be performed so that an inventory of properties is available. Properties that are identified and evaluated as eligible for the National Register of Historic Places will require further consideration. Mitigative actions will be stipulated in a compliance agreement (Memorandum of Agreement or Programmatic Agreement). Mitigation may include, but is not limited to, documentation, marketing plans, easements, and covenants.

(c) The Army, in coordination with the Advisory Council on Historic Preservation (ACHP) has developed the Prototype BRAC PA in appendix C to streamline the agreement preparation process for closing installations. The prototype BRAC PA is intended to be a starting point for installations so that they may benefit from lessons learned during previous BRAC actions. It addresses disposal methodologies and proposed Army actions for treating historic properties during the disposal process. The prototype PA should be used as guidance to develop a situation specific agreement.

(4) Nomination of Historic Properties for Listing in the National Register of Historic Places (NRHP). NHPA Section 110 requires Federal agencies to nominate historic properties for listing in the NRHP, but establishes no compliance deadline for the requirement. NHPA Section 106 and 36 CFR 800 have no requirement for formal nomination and listing of properties on the NRHP. The formal nomination of historic properties for listing in the NRHP has no effect on the way historic properties are managed within the Army given the internal Army historic preservation program established by AR 200-4 and this pamphlet. These establish the Army's program for identifying and managing historic properties, and for making consensus determinations of NRHP eligibility IAW 36 CFR 800 between the installation and the SHPO in the Section 106 process. Therefore, formal nomination of historic properties for listing in the NRHP is not a high priority for the Army. As stated in AR 200-4, it is Army policy that only those historic properties that will be actively managed by the installation as a site of interest open to the general public be formally nominated to the NRHP. Nomination staffing procedures are defined in AR 200-4.

3–4. Native American Graves Protection and Repatriation Act of 1990

a. The intent of the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) is to ensure the protection and the rightful disposition of Native American cultural items located on Federal or Native American lands and in the Federal Government's possession or control. NAGPRA Section 2 and 43 CFR 10 provide a detailed definition of cultural items regulated under the Act. Cultural items are defined as Native American human remains, associated funerary objects, unassociated funerary objects, sacred objects, and objects of cultural patrimony. Implementing regulations for NAGPRA are 43 CFR Part 10.

b. NAGPRA applies to all Army commands, installations, and activities and places affirmative duties on the Army for the protection, inventory, and disposition of Native American cultural items. These requirements include existing collections that contain cultural items, as well as newly discovered cultural items.

c. NAGPRA requirements are as follows:

(1) Establish whether an installation has actual possession or control of existing collections. Collections may reside in installation displays, exhibits, museums, historical holding facilities, satellite installations, off-post museums and curation facilities, or universities or in a contractor's custody. NAGPRA specifies the disposition of cultural items that are property of the United States and the Army, regardless of where such cultural items are currently housed.

(2) NAGPRA Sections 5 and 6 require the Army to determine what Native American cultural items are within its possession or located at its facilities. Although the deadlines for completing inventories have passed, installations should proceed to summarize and report inventory of previously unknown collections as soon as the installation becomes aware of the location of cultural items collected prior to 16 November 1990. "Inadvertent discovery" and intentional excavation of potential cultural items discovered after 16 November 1990 are covered under NAGPRA Section 3(d) and are still under the control and in the possession of the Army. Most installation Section 5 and 6 compliance documentation was compiled by an Army-wide NAGPRA program sponsored by HQDA (AEC), installations are required to initiate any follow-on NAGPRA consultation to complete their NAGPRA compliance responsibility.

(3) NAGPRA, Section 3(c) and 43 CFR 10.3 describes procedures for the intentional archeological excavation of NAGPRA cultural items and human remains. In such instances, the installation commander must first take steps to determine if a planned activity may result in the excavation of cultural items. Prior to issuing approval or permits for such activities, the installation commander must notify in writing the Indian tribes or Native Hawaiian organizations that are likely culturally affiliated with the cultural items that may be excavated. The commander must also provide written notice to any present-day Indian tribe which aboriginally occupied the area of the planned activity or any other Indian tribe or Native Hawaiian organization that are likely to have a cultural relationship to the cultural items.

(a) The written notice must describe the planned activity, its location, the basis upon which it was determined that cultural items may be found, and the basis for determining custody pursuant to 43 CFR 10.6.

(b) The written notice must also propose a time and place for meetings or consultations to further consider the activity, the installation's proposed treatment of the cultural items, and the proposed disposition of the excavated items. Written notice should be followed by telephone contact if there is no response in 15 days. Consultation must be conducted IAW 43 CFR 10.5.

(4) NAGPRA Section 3(d), and 43 CFR 10.4 describes requirements and procedures for the inadvertent discovery of NAGPRA cultural items. These regulatory procedures are complex and it is recommended that a NAGPRA CA be developed that streamlines the procedures. Under this section, inadvertent discovery of these items on an Army facility will trigger a number of actions. The discoverer of the cultural items must provide immediate telephonic notification to the installation commander. The discoverer must then

provide the commander with a written confirmation that the commander has been notified of an inadvertent discovery of NAGPRA cultural items. This written confirmation is termed the discoverer's confirmation of notification (DCON) (Note: Such situations would also require NHPA Section 106 consultation with the SHPO and ACHP if the inadvertent discovery meets the NHPA definition of "historic property"). No later than 3 working days after the installation commander receives the written DCON, the commander must certify in writing that he has received the DCON and if necessary, take immediate steps to further protect and secure the discovery. The commander may resume activities in the area of the inadvertent discovery 30 days after he makes the certification that he has received the DCON, and he has immediately taken the following steps:

(a) Telephonically notify the Indian tribes or Native Hawaiian organizations that are likely to be culturally affiliated with the items, that aboriginally occupied the area of the discovery, and any other tribes or Native Hawaiian organizations known to have a cultural relationship to the cultural items that have been inadvertently discovered. The telephonic notification must be immediate, followed by written confirmation of notification from the commander to the tribe(s) or Native Hawaiian organization(s) containing the information specified in 43 CFR 10.4(d)(1). The commander's written confirmation of notification is termed the commander's confirmation of notification (CCON). If the CCON is provided by certified mail, the return receipt constitutes evidence of the receipt of the written CCON by the Indian tribe or Native Hawaiian organization;

(b) Initiate consultation with the notified tribes or Native Hawaiian organization according to the provisions of 43 CFR 10.5;

(c) Follow the requirements of 43 CFR 10.3(b) if excavation is necessary to recover any inadvertently discovered items or remains; and,

(d) Ensure that any inadvertently discovered items are treated according to 43 CFR 10.6.

(5) The repatriation of cultural items is limited by both law and regulation to lineal descendants or to federally recognized Indian tribes and Native Hawaiian organizations who have cultural affiliation with the cultural items. The installation commander must provide the National Park Service (NPS) Departmental Consulting Archeologist with a notice of intent to repatriate that contains the information specified in 43 CFR 10.8(f). The Departmental Consulting Archeologist must publish the notice of intent to repatriate provided by the installation in the Federal Register. Repatriation must be made within 90 days of a request that satisfies the criteria stated in 43 CFR Part 10.10. Repatriation may not occur until at least 30 days after the notice to repatriate is published in the Federal Register. The procedures in 43 CFR 10.10 (c) must be followed in situations where there are multiple Indian tribes or Native Hawaiian organizations requesting repatriation of the same cultural items, or when the items are indispensable to the completion of a specific scientific study, the outcome of which is of major benefit to the United States.

d. Areas of concern in complying with NAGPRA are as follows:

(1) Installations should not assume that because a Section 5 Inventory or Section 6 Summary report was completed under the Army-wide NAGPRA Compliance Program, that their responsibilities under NAGPRA are complete. The consultation requirements, repatriation, and other mandates set out in NAGPRA can only be met by the installation commander's action and initiation of consultation.

(2) Neglecting to determine the full scope of installation NAGPRA responsibilities for lands that are not owned by the agency in fee-title (for example, leased or withdrawn property) but are under the installation's "control" through lease or other special use permit or circumstances.

(3) Planning activities that result in the intentional excavation of cultural items may be controversial. An on-going consultation program with concerned tribes will aid negotiations in these cases. Appendix E contains a prototype NAGPRA CA for such actions, and appendix F contains Army guidelines for consultation with Native Americans.

(4) Inadvertently discovering cultural items has the potential to temporarily halt projects. Early resumption of the project or activity in the area of the inadvertent discovery of the cultural items may be allowed for if a CA is in place anticipating such situations and contains a recovery plan.

e. The NPS is designated IAW 43 CFR 10 to provide oversight in support of NAGPRA compliance. The NPS Departmental Consulting Archaeologist's office may review and comment on the NAGPRA inventory and summary reports, notifications, identification processes, and proposed repatriation activities initiated by Federal agencies. The NAGPRA Review Committee advises Congress on matters related to NAGPRA, including monitoring Federal agencies' performance, making recommendations to facilitate dispute resolution, and compiling a record of culturally unidentifiable human remains that are in the possession or control of Federal agencies, along with recommendations for their disposition. NAGPRA Review Committee recommendations or comments on Federal agency actions are advisory in nature.

f. NAGPRA regulations encourage CAs which establish a process for executing standard consulting procedures. CAs should address all installation land management activities that could result in intentional excavation or inadvertent discovery of cultural items. CAs streamline consulting procedures and should be developed where cultural items will probably be encountered during routine installation activities (43 CFR 10.5(f)).

g. Payment of fees to Indian tribes for NAGPRA consultation. Federally recognized Indian tribes and official representatives of such tribal governments receive Federal funds to conduct tribal business and should not be provided additional "consulting" fees by installations for NAGPRA consultation. Traditional religious practitioners and other traditional cultural authorities may not be salaried tribal government representatives and may be entitled to additional fees or honoraria, at the installation commander's discretion. Funding travel for tribal members for the purpose of NAGPRA consultation is at the commander's discretion. This guidance applies equally to consultation with Indian tribes under NHPA, AIRFA, EO 13007, and ARPA.

h. Guidelines for Consultation with Native Americans. Appendix F contains guidelines for installations consultation with Indian tribes, Native Hawaiian Organizations, Native Alaskans, and Indian groups that are not federally recognized. These guidelines are comprehensive and may be useful in consultation with Native Americans under other statutes such as NEPA, NHPA, ARPA, AIRFA, and EO 13007.

3–5. American Indian Religious Freedom Act/Executive Order 13007 Indian Sacred Sites

a. The American Indian Religious Freedom Act (AIRFA) applies the First Amendment guarantee of religious freedom to Native Americans. No implementing regulations have been promulgated. Native American religious practices may involve requirements to access sacred sites on installations, use and possession of sacred objects, and worship through ceremonials and traditional rites.

(1) Although there is no affirmative responsibility to consult with Native Americans under AIRFA, complying with the spirit, meaning and intent of AIRFA can only be met by consulting with the appropriate Indian tribe or Native Hawaiian organization. Guidelines for such consultation are provided in appendix F.

(2) Consultation should identify sites necessary for traditional religious practices and the time or season during which access is required. Installation commanders should discuss with Native Americans the terms and restrictions on access necessary to ensure safety and national security and avoid impact to the military mission. The installation commander should assist in sustaining the Native Americans' privacy in practicing religious rites and ceremonies.

(3) An important element in complying with the meaning and intent of AIRFA is to consult with the traditional religious leaders. This could be an issue if the traditional practitioners do not wish to

be identified. During consultation with tribal government representatives, the installation should request that traditional religious leaders be made aware of the consultation. Tribal representatives will sometimes identify traditional religious leaders.

(4) Appointing an installation Coordinator for Native American Affairs provides consistency in communicating with a tribe regardless of whether it is for AIRFA, NHPA, NAGPRA, EO 13007, or ARPA compliance purposes.

b. EO 13007, effective 24 May 1996, provides direction to Federal agencies on managing sacred Indian sites.

(1) Under EO 13007, the installation, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, must provide access and ceremonial use of Native American sacred sites, avoid adversely impacting those sites, and maintain the confidentiality of sacred site locations.

(2) "Sacred site" is defined in EO 13007 as any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion, provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.

(3) Sacred sites can include but may not be limited to burial areas and graves, purification sites, healing sites, special floral and faunal and mineral areas that contain resources used in religious ceremonies, vision quest sites such as caves or mountain tops, myth and legendary sites associated with certain geographical landforms, and historic sites associated with specific historic events.

(4) Where needed, each installation must develop procedures to meet the sacred site access and protection requirements discussed above. The procedures must also provide reasonable notice to Native American tribes of actions that may impact the integrity of sacred sites. Installation actions under EO 13007 will comply with the Executive Memorandum of 29 April 1994, "Government-to-Government Relations with Native American Tribal Governments." EO 13007 applies only to federally recognized Indian tribes.

(5) Compliance with EO 13007 is tied to the consultation process. A relationship of trust and respect established through open communication will significantly contribute to meeting the goals of EO 13007. Such consultation must be conducted on a government to government basis; the consultation guidelines at appendix F may be useful.

3–6. White House Memorandum dated 29 April 1994—Government-to-Government Relations with Native American Tribal Governments

a. The White House Memorandum on Government-to-Government Relations with Native American Tribal Governments reiterates the Federal government's relationship with Native American tribes as one of "government-to-government."

b. This memorandum is applicable whenever there is interaction between Federal agencies and federally recognized tribes.

c. To implement the Government-to-Government memorandum, Installation commanders should—

(1) Afford tribal leaders the same respect as a head of state.

(2) Coordinate compliance activities through the head of the tribal government.

(3) Consult with the appropriate head of the federally recognized tribal government before taking actions that could impact cultural resources of importance to a tribe.

(4) Apply the requirements of EO 12875, Enhancing the Intergovernmental Partnership and EO 12866, Regulatory Planning and Review, to design solutions and tailor Federal programs, when necessary, to the specific and unique needs of tribal communities.

d. The installation commander represents the United States in the government-to-government relationship between the installation and the head of a federally recognized tribal government. AR 200-4 (2-8), provides the Army policy regarding establishment of the government-to-government relationship.

e. In implementing this Presidential memorandum, the installation commander should—

(1) Involve the Installation Protocol Officer as the government-to-government relationship is being developed.

(2) Appoint an installation Coordinator for Native American Affairs for matters of mutual concern with the tribe and to contribute to the continuity necessary to establish a successful government-to-government relationship. The person appointed as the coordinator should be professionally trained in the culture and history of Native Americans. Selection of an individual without the necessary skills and training could be detrimental to the consultation relationship.

f. Supplemental information pertaining to the Government to Government Relationship with Native American Tribal Governments is contained below. More detailed information on Indian Tribes and Native Hawaiian Organizations is contained in appendix F.

(1) The United States and federally recognized Indian tribes, including Alaska Native villages, exist in a guardian-ward relationship. This relationship reflects the status of each tribe as a "domestic dependent nation." Because of this status, the Federal government is considered to have a duty to protect tribal interests. This duty is referred to as the "trust responsibility." The trust relationship, which is perhaps the most important concept related to Indian law, can be divided into three broad areas:

(a) Protecting trust property.

(b) Protecting self-government.

(c) Providing services.

(2) The U.S. Constitution (Article I, Section 8) grants Congress the power to regulate commerce with Indian tribes along with all other sovereign nations. Treaties that were negotiated between Indian tribes and the Federal Government reserved rights for the tribes rather than conferred rights to them. Indian tribes in the continental United States differ substantially from those of Native Alaskan and Native Hawaiian groups, given the geographic and cultural differences between these groups and the Federal Government's response to them.

(a) The tribal organizations of many federally recognized Indian tribes in the Continental United States were defined by the Indian Reorganization Act (IRA) of 1934. Some federally recognized Indian tribes have trust lands, or reservations, associated with them.

(b) The Federal "government-to-government relations" policy with respect to Federally recognized Indian tribes should be carried out between the installation commander and respective head of the tribal government. However, most Alaskan Native lands are actually owned by the regional and village corporations rather than the tribe. Thus, consultation with representatives of these governmental entities may be required as well.

(c) In Hawaii, the situation is different from both the continental United States and Alaska. Native Hawaiians lack the Federal recognition status of Indian tribes and Alaskan Native villages. Instead, Federal legislation recognizes State and independent agencies in Hawaii who, in effect, serve as the counterpart of Indian tribal councils and Alaska Native villages. For the purposes of consultation with Native Hawaiian organizations, relevant lands fall into two categories:

1. Hawaiian "homelands" are lands set aside under the terms of the Hawaiian Homes Commission Act of 1920 and are administered by the Department of Hawaiian Lands.

2. "Ceded lands" are former crown and government lands of the Kingdom of Hawaii that were ceded to the Federal Government when Hawaii became a territory of the United States.

(3) Many Indian tribes, Alaskan Native villages, and Native Hawaiian organizations have developed their own internal regulations, ordinances, resolutions, and protocols for handling government-to-government relations and issues covered under specific Federal cultural resource legislation. Such regulations and procedures may describe the relative authority of various tribal representatives, departments, or committees, as well as a process for consultation

and preferred methods of resolving issues. The installation commander should request such information when first establishing a consultation relationship.

3–7. Archaeological Resources Protection Act (ARPA) / Antiquities Act/Archeological and Historic Preservation Act

a. ARPA overlaps with and partially supersedes the Antiquities Act. It provides legal penalties for the unauthorized excavation, removal, damage, alteration, defacement, or the attempt of such acts, of any archaeological resource more than 100 years old on Federal lands. ARPA defines an archeological resource as any material remains of past human life or activities that are of archeological interest. Such remains include but are not limited to pottery, basketry, bottles, weapons, projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of the foregoing items. Paleontological specimens, deposits and remains are not considered an archeological resource under ARPA unless found in an archeological context. However, IAW AR 200-4 important paleontological specimens and deposits are considered as significant scientific data under the AHPA and should be integrated into ICRMPs for management purposes.

b. ARPA establishes a permitting system to authorize excavation or removal of archaeological resources by qualified applicants. The Army implements this requirement IAW AR 405-80. The installation's supporting USACE District Real Estate Office issues permits after the installation commander conducts consultation with the culturally affiliated Indian tribes of Native Hawaiian organizations according to 43 CFR 10.5 and 32 CFR 229.

(1) *ARPA requirements for installations:*

(a) Provide USACE District with approval to issue permits after necessary consultation and compliance actions (for example, NHPA, NEPA) have been met. (Army staff or contractors carrying out official duties and who meet the professional qualifications and whose investigations meet the requirements of 32 CFR 229.8 are not required to obtain a permit under ARPA or the Antiquities Act.)

(b) Monitor permitted activities to ensure that the terms and conditions of issued permits are being met; if not, the permit may be revoked through the USACE.

(c) Ensure that military police, installation legal staff, the installation Public Affairs Office (PAO), and the fish, game, and recreation staff are all familiar with the requirements and applicable civil and criminal penalties under ARPA.

(d) Establish a program to increase public awareness of the significance of the archaeological resources on the installation and the need to protect such resources.

(2) *Areas of special consideration:*

(a) ARPA permit applicants must provide sufficient information in their permit applications to ascertain their qualifications, proposed action, and time tables.

(b) Issuing an ARPA permit may trigger separate compliance responsibilities under NHPA and NEPA, and NAGPRA.

(c) It is important that personnel on the installation with enforcement authority and cultural resource responsibilities receive ARPA training so that they are aware of the specialized requirements of an ARPA investigation and are alert to suspicious activity.

3–8. 36 CFR 79 Curation of Federally-Owned and Administered Archaeological Collections

a. The Curation of Federally-Owned and Administered Archaeological Collections (36 CFR 79) details how to maintain archeological collections (AR 200-4 para 2-7). An archaeological collection is defined in 36 CFR 79 as material remains that are excavated or removed during a survey, excavation, or other study of a prehistoric or historic resource and associated records that are prepared or assembled in connection with the survey, excavation, or other study. It is important to note that the records associated with the archeological artifacts are considered part of the collection and subject to this regulation. Such associated records include documentation of efforts to locate, evaluate, record, study, preserve, or recover a prehistoric or historic resource and may contain field notes, photographs, maps, artifact inventories, reports, and archival documents associated with archeological investigations.

b. 36 CFR Part 79 applies to collections from archeological activities performed on Army installations. Although there is no compliance deadline stated in the regulation, 36 CFR 79 requirements include maintaining collections in a manner that ensures long-term care. Archeological collections always remain the property of the Army and must be maintained in perpetuity. Therefore, installations should acquire curatorial services from another agency or organization (for example, university, research center, and museum) through a curation agreement for permanent disposition. A sample memorandum of understanding for curatorial services is contained in 36 CFR 79.

c. Common errors in complying with 36 CFR 79 include the following:

(1) Failing to include archeological curation requirements in scopes of work for archaeological projects or in ARPA Permits.

(2) Storing artifacts and records in inappropriate facilities.

(3) Failing to have installation personnel inspect their artifact repository for compliance with 36 CFR 79.

d. Artifact curation must be cost effective and relevant for current and future research needs. To decrease the volume of materials placed in permanent curation, cultural resources managers must make critical decisions about materials that should be retained and those that may be handled in alternate manners. Not all artifactual material recovered in the field need be accessioned into Federal collections and permanently curated. Material found during initial inventories may be analyzed, recorded, and left in the field location. In the course of further archeological excavation beyond the inventory level, for example, for National Register evaluation or for data recovery (mitigation) purposes, some classes or types of artifacts may be analyzed and discarded or stored through alternate means. Permanent curation should be reserved for diagnostic and exotic artifacts and other significant and environmentally sensitive material that will add to site interpretation. Soil samples should be processed prior to curation to reduce their storage volume.

Appendix A
References

Section I
Required Publications

AR 200–1
Environmental Protection and Enhancement (Cited in paras 1-4e, and 2-2b)

AR 200–2
Environmental Effects of Army Actions (Cited in para 3-2b)

AR 200–4
Cultural Resources Management (Cited in paras 1-1a, 1-4, 2-3, 2-4, 2-5, 2-7, 2-8, 3-3, 3-6, and 3-7)

AR 405–80
Granting Use of Real Estate (Cited in para 3-7b)

Section II
Related Publications

A related publication is merely a source of additional information. The user does not have to read it to understand this pamphlet.

AR 15–13
Military Construction Army (MCA) Disposal of Structures

AR 190–31
Crime Prevention Program, Department of the Army

AR 200–3
Natural Resources, Land, Forest, and Wildlife Management

AR 210–20
Master Planning for Army Installations

AR 405–10
Acquisition of Real Property and Interests Therein

AR 405–90
Disposal of Real Estate

AR 415–15
Military Construction, Army (MCA) Program Development

AR 415–35
Minor Construction

AR 420–10
Facilities Engineering: General Provisions, Organizations, Functions, and Personnel

AR 420–17
Real Property and Resource Management

AR 420–22
Preventative Maintenance and Self-Help

AR 870–20
Historical Properties and Museums

DODI 4715.3
Environmental Conservation Program

Section II
Related Publications

This section contains no entries.

Section III
Prescribed Forms

This section contains no entries.

Section IV
Referenced Forms

This section contains no entries.

Federal Statutes:

Abandoned Shipwreck Act of 1987 43 USC 2101-2106
American Indian Religious Freedom Act of 1978, as amended 42 USC 1996-1996a
Antiquities Act of 1906 16 USC 431-433; 34 Stat. 225
Archeological and Historic Preservation Act of 1974 16 USC 469-469c
Archeological Resources Protection Act of 1979 16 USC 470aa-470ll
Historic Sites Act of 1935 16 USC 461-467
National Environmental Policy Act 42 USC 4321-4370c
National Historic Preservation Act of 1966, as amended 16 USC 470-470w
Native American Graves Protection and Repatriation Act of 1990 25 USC 3001-3013

Federal Regulations:

Advisory Council on Historic Preservation, Protection of Historic and Cultural Properties, 36 CFR 800
Council on Environmental Quality, Regulations Implementing the National Environmental Policy Act, 40 CFR 1500-1508
DOD, Protection of Archeological Resources, 32 CFR 229
Department of the Interior, Native American Graves Protection and Repatriation Act, 43 CFR 10
Department of the Interior, Curation of Federally-owned and Administered Archeological Collections, 36 CFR 79
Department of the Interior, Determinations of Eligibility for Inclusion in the National Register of Historic Places, 36 CFR 63
Department of the Interior, National Historic Landmark Program, 36 CFR 65
Department of the Interior, National Register of Historic Places, 36 CFR 60
Department of the Interior, Preservation of American Antiquities, 43 CFR 3
Department of the Interior, Supplemental Regulations [per ARPA] 43 CFR 7.2
Department of the Interior, Waiver of Federal Agency Responsibility under Section 110 of the National Historic Preservation Act, 36 CFR 78

Executive Orders and Presidential Memoranda:

EO 13007—Indian Sacred Sites
EO 11593—Protection and Enhancement of the Cultural Environment
White House Memorandum for the Heads of Executive Departments and Agencies, dated April 29, 1994: Government-to-Government Relations with Native American Tribal Governments

Appendix B
Procedures for Compliance with 36 CFR 800 Protection of Historic Properties

B–1. General

The following is intended to be a step by step review of the Council's regulations, "Protection of Historic Properties" (36 CFR Part 800).

B–2. Review

a. Prior to implementing an undertaking, Section 106 requires Federal agencies to—

(1) Take into account the effect of the undertaking on historic properties.

(2) Afford the Council with a reasonable opportunity to comment on the undertaking.

b. Undertakings. The Army must first determine if the proposed action is an undertaking. As defined by the NHPA, an undertaking is a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including—

(1) Those carried out by or on behalf of an agency;

(2) Those carried out with Federal financial assistance;

(3) Those requiring a Federal permit, license, or approval; and,

(4) Those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.

c. Examples of undertakings include, but are not limited to—

(1) Construction.

(2) Land alterations.

(3) Building demolition.

(4) Building renovation.

(5) Building or landscape maintenance and management.

(6) Building abandonment or termination of maintenance.

(7) Changing the use of a facility in a way that could alter its character.

(8) Transfer of property out of Federal ownership.

(9) Transfer of property between Federal agencies, where such a transfer changes its use.

(10) Training that involves use of land, airspace over land areas, or buildings.

(11) INRMP actions.

d. Listed below are two basic tests to help decide if an action is an undertaking:

(1) Is that action under the direct or indirect jurisdiction of the Army, or is the Army approving a license, lease, or permit?

(2) Is the action a project, activity, or program that can result in changes in the character or use of historic properties?

e. Area of Potential Effect. If the action is an undertaking, the Army must then determine the "area of potential effect" (APE). The APE is defined in 36 CFR 800 as "the geographic area or areas within which the undertaking may cause changes in the character of or use of historic properties, if any such properties exist." Historic character can be defined as those features that render the resource significant under the National Register criteria.

f. Important issues to remember regarding the APE are listed below:

(1) The APE is defined before the identification of historic properties.

(2) The APE is not based on land ownership and, thus, is not necessarily confined to the installation.

(3) All alternative locations under consideration for the project must be included.

(4) All locations from which the project may be visible and where there might be changes in traffic patterns, land use, or public access must be included.

(5) The APE may not be the same area of effect as defined under NEPA.

(6) The APE may not be a single area and may not have hard and fast boundaries.

(7) The definition of the APE does not dictate what the Army must do to identify, avoid, or mitigate effects within it.

g. Participants. There are several key participants in the Section 106 review process. It is important to the success of the process that appropriate parties are consulted. The regulations specify when Federal agencies must seek the views of, or consult with, the various parties. The Section 106 participants are:

(1) The Army: Responsible for compliance with Section 106 and 36 CFR Part 800.

(2) The Council: Independent Federal agency that oversees review of Federal undertakings under Section 106, pursuant to 36 CFR Part 800.

(3) The SHPO: Coordinates the national historic preservation program at the State level and is responsible for consulting with Federal agencies in the Section 106 review process.

(4) Interested persons may include—

(a) Local governments when the project affects historic properties under their jurisdiction.

(b) Applicants for Federal assistance, permits, licenses (proponents such as government-owned/contractor-operated).

(c) Indian tribes, Native Hawaiian organizations, and other Native Americans.

(5) The public: Should be informed and involved.

h. The Five Step Process. The review process starts by considering the broad environmental consequences of an undertaking and then progressively narrows the focus until specific problems can be identified, understood, and resolved. The process consists of five primary sequential steps—

(1) Identify and evaluate historic properties.

(a) Identification and evaluation of the property is done in consultation with the SHPO and other interested parties (as appropriate). It typically involves some level of professionally supervised background research and field survey, but there is no standard requirement for survey. The level and kind of work to be done depends on the probable nature of the historic properties and the kinds of expected effects on them. Part 800, title 36, Code of Federal Regulations requires a "reasonable and good faith effort."

(b) Evaluation involves comparing the property with the National Register criteria. The Army is responsible for determining the National Register eligibility of a property. If the Army and the SHPO agree that a property meets the criteria, it is considered eligible for the National Register for the purposes of Section 106. If the Army and the SHPO do not agree about eligibility, or if the Council or the Keeper of the National Register request, the Army must seek a formal determination of eligibility from the Keeper, IAW procedures in AR 200-4. If the Army and the SHPO agree that a property does not meet the criteria, the property is not considered eligible, and the Army does not need to consider the effects further under Section 106, except if the Council or the Keeper so request.

(c) Determining the eligibility of properties less than 50 years old poses special challenges, since so little time has passed that objective judgments about significance are difficult. National Register Bulletin 22, "Guidelines for Evaluating and Nominating Properties that have Achieved Significance Within the Last Fifty Years," provides guidance.

(2) *Assess Effects.* Assessing effects is also done in consultation with the SHPO and interested parties and involves the Criteria of Effect and Adverse Effect found in 36 CFR Section 800.9. It involves only those properties that have been found eligible for or are listed in the National Register. Assessing effects is not required if the properties are considered to be ineligible.

Criteria of Effect

Altering the characteristics of a property that may qualify it for the National Register

Altering features of a property's location, setting, or use that contribute to its significance

Criteria of Adverse Effect

Physical destruction, damage, or alteration
Isolation from or alteration of the setting
Introduction of visual, audible, or atmospheric elements that are out of character
Neglect
Transfer, lease, or sale of property

(a) If the Army and the SHPO agree that the undertaking will have no effect of any kind on historic properties, the Army formally notifies the SHPO and other interested parties of this finding. The Army can then proceed without further review under Section 106, unless some party objects to the Council. The Council then investigates the objection and may advise the Army of an alternate course.

(b) If the Army and the SHPO agree that the undertaking will have no adverse effect, then the Army files documentation supporting this finding with the Council, which has 30 days to review it. If the Council does not object or reply, the Army can proceed without further review, subject to any conditions to which the Army may have agreed. If the Council objects to the Army's no adverse effect finding, then consultations need to take place.

(c) If the Army determines that there will be an adverse effect, then the Army notifies the Council. The Army should consult with the SHPO and interested parties to resolve the adverse effect. The Council may, at its discretion, participate in the consultation.

(3) Consult and resolve adverse effects.

(a) Consultation to resolve adverse effects involves considering alternatives, in consultation with the SHPO, other parties, and sometimes the Council. It can take whatever form the consulting parties agree to and has no time limits.

(b) Resolution of adverse effects may include eliminating the adverse effect, reducing the severity, mitigating the adverse effect, or accepting it in the public interest. It is appropriate at this point in the Section 106 process to consider cost factors and mission requirements when trying to decide how to carry out the undertaking with the least possible harm to historic properties.

(c) In most cases, consultation results in consensus that is embodied in a Memorandum of Agreement (MOA). The MOA is executed by all the consulting parties, and specifies what the Army (or others, such as a proponent) will do to avoid, reduce, or mitigate the effect. An MOA must be signed by the Army, the SHPO, the Council, and any other party that is assigned responsibility in the MOA.

(4) Obtain Council comment.

(a) An MOA is evidence of Council comment on the effects of the Army's undertakings on historic properties. It is a legally binding document that commits the Army to a course of action.

(b) If the Army does not reach agreement with the other parties, the Army, SHPO, or Council can terminate consultation. The Council will then provide advisory comments to the Army. The comments are rendered by the Council members—the 20 Presidential appointees, agency heads, etc.,—to the Secretary of the Army, who must give the comments personal attention. The effect of Council comment is the same as that of an MOA—it evidences that the Army has fulfilled the requirements of Section 106. The difference is that the Council comments are not legally binding; the Army is only required to consider the comments in making its decision about the undertaking.

(5) Proceed. Once Council comment has been received, the Army can, subject to the terms of any agreement that has been reached, proceed. Note that Section 106 does not require that all properties be preserved or maintained. It does not prohibit an agency from demolishing or altering historic properties. It does require the Army to consider the effects of an action before going forward with it and to give the Council the opportunity to comment to the Army. Concerns to keep in mind are as follows:

(a) Section 106 must be completed prior to approval of the expenditure of funds on a project.

(b) Funds can be spent on nondestructive planning.

(c) Knowledge that a historic property is present is not required; it is only required that the proposed action may affect one if it were there.

(d) In making decisions, the Army consults with others but these "others" do not make decisions for the Army.

(e) The Council comments only on actions that will affect historic properties.

(f) The passage of time may justify the re-evaluation of properties previously determined eligible or ineligible.

i. Programmatic Agreements. A Programmatic Agreement (PA) offers an alternative to the standard Section 106 review process.

(1) Section 13, part 800, title 36, Code of Federal Regulations, outlines when a PA can be used and, in general terms, describes how one is negotiated and finalized. A sample PA is provided in appendix C. The review process for PAs is intentionally vague to allow maximum flexibility for this alternative Section 106 tool. A PA can be negotiated for an individual project or for an entire program. A project-specific PA is appropriate when the undertaking is complex with many actions that will happen over a period of time, or, when the Army needs to approve an undertaking before the Section 106 process can be completed. Such a PA might outline the consultation process rather than specific mitigation measures or alternatives. An example of a PA for an entire program is the World War II temporary structures PA, which requires documentation of specific examples of World War II temporary structures.

(2) Another application of a PA is to develop management and alternative review procedures for an installation that can substitute for the standard Section 106 review process. The advantage of such a PA is that maintenance standards, design guidelines, and review procedures can be tailored to the needs of the installation to improve efficiency and minimize conflicts between mission needs and historic preservation responsibilities.

(3) PAs are appropriate for programs or projects when the following conditions apply:

(a) Effects on historic properties are similar and repetitive or are multistate or national in scope.

(b) Effects on historic properties cannot be fully determined prior to approval.

(c) Programs or projects involve development of regional or land-management plans.

(d) Programs or projects involve routine management activities at Federal installations.

(4) A PA cannot implement an ICRMP. An ICRMP is intended to integrate all of the installation's responsibilities for managing all cultural resources as defined by AR 200-4. Implementing an ICRMP with a PA would vest review authority in the Council and SHPO over the installation's compliance with statutes and regulations that are clearly outside the statutory authority of the Council and SHPO. Council and SHPO statutory authority is limited to consultation with Federal agencies under the NHPA and 36 CFR 800.

(5) A PA is appropriate when the installation has many historic properties to manage.

(6) The PA should be relevant and appropriate to the installation resources, (that is, there is no need for a large section addressing archaeological resources if the likelihood of finding such resources is slim).

(7) The PA should be realistic and should not commit to more than the installation can do (for example, completing a survey versus establishing a program for surveying).

(8) The effect of a PA, whether for a single undertaking or a program, is the same as an MOA. It also evidences that the Army has satisfied the requirements of Section 106 and documents Council comment for individual actions covered by the PA.

[1] The Council has numerous fact sheets on all aspects of the Section 106 process. For copies of these publications, browse the Council's website at www.achp.gov.

(9) Consultation to develop a PA should always involve the Council according to 36 CFR 800.13. [1]

Appendix C
NHPA Section 106 Programmatic Agreements

This appendix contains two sample programmatic agreements (PAs). The first agreement is for ongoing installation operations and management. The second PA is for installations that are in the Base Realignment and Closure program.

Standards For Developing A NHPA SECTION 106 Programmatic Agreement For Installation Operations And Management

Introduction

The purpose of these standards is to assist installations in developing programmatic agreements (PA) for ongoing operations, maintenance, and management activities. AR 200-4 encourages installation commanders to develop PAs because a PA can tailor the Section 106 review process to the installation's normal operating systems and can serve as a program management tool.

A PA should integrate historic preservation compliance requirements with installation planning and management. Particular classes of activities such as maintenance of historic buildings might be addressed through standardized practices thereby reducing or eliminating Section 106 review of individual actions. Systems for both internal and external reviews can be established that conform to the normal planning and implementation of projects. The State Historic Preservation Officer (SHPO) or an Indian tribe might be regularly involved in project planning to ensure the consideration of preservation concerns, to provide technical assistance, and to reduce conflicts between historic preservation and ongoing operations. A PA can provide an installation with flexibility and greater efficiency both in managing historic properties and in project planning.

This document is organized in the following manner. Introductory material on preparing PAs is included and the purpose of this document is explained. This is followed by sample prefatory language for a PA, and sample stipulations in PA format. Additional guidance for developing stipulations is provided in bold-face lettering. Installations should only use the sections of these standards that apply to the historic property types present on their installation, and should avoid verbatim use of these sample stipulations.

Preparing a Programmatic Agreement

What is a programmatic agreement

A PA is a planning tool as well as the means by which an installation can meet the requirements of Section 106 of the National Historic Preservation Act for all individual undertakings covered in the PA. Rather than case-by-case review of every undertaking at the installation, a PA sets forth means by which the installation will comply with Section 106 via an alternative to the standard process for each undertaking. It is a legal document, executed by the Army, the SHPO, the Advisory Council on Historic Preservation (Council), and other appropriate concurring parties, that evidences the installation's compliance with Section 106 and the Council's regulations, "Protection of Historic Properties" (36 CFR Part 800), when the terms of the PA are carried out and until the PA expires or is terminated. The Council's regulations at 36 CFR Section 800.14 encourage Federal agencies to develop PAs for routine management activities at Federal installations and when preparing land management plans.

Considerations before developing a programmatic agreement

There are several considerations to address before preparing a PA; attention to these will simplify the consultation process and ensure that the PA fulfills the installation's needs. First, careful consideration should be given to the scope of the PA. Clarify what actions, programs, and projects will be covered in the PA and what historic properties will be involved. Generally, it is preferable to address all potential undertakings to avoid confusion about actions that are covered by the PA and actions that require review under the standard Section 106 process. It is important to remember that the PA replaces 36 CFR Part 800.4 through 800.6 for the program, actions, and projects it covers. The Section 106 regulations no longer apply once the PA is in place, unless the PA specifically cites the regulations or sections of the regulations.

The installations should also consider factors that might affect implementation of the PA such as Army or major command policies, funding, or personnel changes. It is important to be realistic to ensure that the PA will really work. Finally, many PAs are "filed and forgotten." It is very important to include provisions for implementation of the PA, to include regular progress reporting, monitoring, review, and amendments when needed, and termination.

Developing a programmatic agreement

Consultation is the key to the successful and efficient development and implementation of a programmatic agreement. The principle consulting parties include the installation, the SHPO, and the Council. There are, however, other parties that should be invited to participate including Indian tribes or Native Hawaiian organizations, local preservation organizations, and interested members of the public. Some installations have public participation plans in place and have already identified parties that are interested in the installation's historic properties. For those installations that do not have such a plan, or that have not yet identified interested parties, the SHPO can provide assistance. The installation might also contact local preservation groups or review boards, universities, and professional organizations. It is important to note that not all "interested parties" become "consulting parties" who are invited to concur with and sign the PA.

If there are a large number of consulting parties, the installation might develop a plan that identifies the point of contact for each group, establishes a schedule for completing the PA, and outlines the goals of the consultation process. It might be useful to hold regularly scheduled meetings where the consulting parties review the progress of the PA, resolve issues as they arise, and advise the installation. Consultation should be as inclusive and as flexible as possible, providing ample opportunity for all parties to express their views and for issues to be resolved.

Participants should be identified and invited to consult early in the process of developing the PA. All consulting parties should be provided with adequate documentation that prepares them to participate effectively. To ensure consideration in the consultation process, participants should be encouraged to express their concerns and to share information about historic properties. All consulting parties should be provided an opportunity to review drafts of the PA and to share comments.

Information that consulting parties should be provided includes, but is not limited to, the following:

1. Efforts the installation has made to identify historic properties;
2. Historic properties that have been identified and evaluated;
3. Databases, if any, that have been developed;
4. Historic contexts have been developed for the installation or Army-wide historic contexts that might apply to the installation's properties;
5. Projects and programs identified in the 5-year plan that might affect historic properties including mission requirements; and,
6. Project schedules.

The installation Cultural Resources Manager (CRM) should also coordinate with other offices at the installation that will be responsible for actions under the PA or that will be affected by the terms of

the PA. Full participation by installation staff is a key to successful implementation of the PA. Tenant activities might also be notified of the consultation and should be provided a copy of the executed PA.

Perhaps the most important issue to be addressed in developing a PA is the expertise available to the installation to carry out its terms. Some installations have historic preservation experts such as archeologists, historians, historic architects, and architectural historians on staff. Other installations have such expertise available through contractual and other arrangements. A PA for installation management will require that an installation have the appropriate professionals at its disposal to carry out the historic preservation work required by the PA. So, prior to initiating consultation to develop the PA, the installation should consider the kinds of historic properties that are known or likely to occur on the installation in determining their required professional expertise, then take the necessary steps to obtain such expertise.

PA Sample Stipulations and Explanatory Notes

The following includes sample stipulations, some of which contain explanatory notes. The user should be aware that this sample language is not intended to simply be inserted into a PA without careful consideration by the consulting parties. Stipulations must be tailored to the installations programs and its particular needs. There are also sections where guidance rather than specific stipulation language is offered. In these cases, stipulations should be developed in consultation. Use only those stipulations that apply and be aware that the stipulations offered here are not meant to be exhaustive. There may be other issues that need to be addressed to accommodate specific circumstances at the installation, unique historic properties, or the installation's relationship to other parties such as an Indian tribe. Finally, the programmatic agreement should be comprehensive, realistic, and responsive to the installation's needs. The programmatic agreement is intended to tailor the Section 106 process, to the maximum extent possible, to the installation's mission and program, not to create additional or more complicated review processes.

The PA is organized as follows: It begins with the title and the prefatory language which consists of the whereas clauses. Stipulations are presented in separate sections which include, planning and coordination, identification and evaluation of historic properties, treatment of such properties, and additional considerations such as tenant activities and involvement of interested persons. These are followed by sample standard administrative stipulations. Throughout the PA, sample stipulations are given in the actual format in which they may appear, while explanation or background information is given in boldface lettering. Issues which need to be addressed, but for which specific stipulation language is not offered, also appear in boldface lettering.

Title and Preface to the Programmatic Agreement

The title should include all the State Historic Preservation Officers (SHPOs) that represent the states in which the installation is located and should clearly indicate what the PA is about:

PROGRAMMATIC AGREEMENT
AMONG
THE DEPARTMENT OF THE ARMY,
THE (NAME) STATE HISTORIC PRESERVATION
OFFICER, AND
THE ADVISORY COUNCIL ON HISTORIC
PRESERVATION
REGARDING THE OPERATION, MAINTENANCE,
AND DEVELOPMENT OF
THE (NAME OF INSTALLATION)
AT (LOCATION)

Whereas the Army proposes to continue to coordinate and administer an ongoing program of operation, maintenance, training, testing, and development at the [name of installation and location]; and,

Whereas the Army has determined that the aforementioned program may have an effect on properties [eligible for listing/listed] in the National Register of Historic Places (National Register) and has consulted with the Advisory Council on Historic Preservation (Council) and the [name of State] State Historic Preservation Officer (SHPO) pursuant to Section 800.13 of the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and,

Whereas the [name of installation] is understood to be the property indicated on the Map at appendix A [also indicate here which subinstallations, if any, are included in the Programmatic Agreement]; and,

Whereas this Programmatic Agreement (PA) applies to all undertakings within the boundaries of [name of installation] that are under the direct or indirect jurisdiction of the Army including undertakings performed by the [name of installation] lessees or permitees; and,

Whereas the [name(s) of consulting party(ies)] has/have participated in the consultation and been invited to concur in this PA; and,

Whereas the Historic Building Treatment Standards1 (Treatment Standards) are included in the Programmatic Agreement as appendix [ ]; and,

Whereas the terms defined in appendix [ ] are applicable throughout this PA; and,

Whereas pursuant to Army Regulation 200-4 (AR 200-4), the Army has designated the installation commander (Commander) to serve as the agency official responsible for compliance with the requirements of Section 106 of the National Historic Preservation Act; and,

NOW, THEREFORE, the Army, the [name of State] SHPO, and the Council agree that Section 106 compliance at [name of installation] shall be administered according to the following stipulations to satisfy the Army's responsibilities for all individual undertakings associated with installation operations, maintenance, and development.

Figure C-1. Sample programmatic agreement

There may be additional information that is appropriate to include in the preface to the programmatic agreement. For example, any information regarding the status of historic property inventories would be included here. The prefatory section sets forth the basis for the agreement and includes information on actions that have already been taken, issues that have already been resolved, and information that is necessary to understand the program, historic properties, and historic preservation issues. The stipulations section is reserved for those actions yet to be implemented.

Additional treatment standards might also be appended to the PA. The installation and SHPO, for instance might modify national standards to the specific property types at the installation. There might also be a list of exempt activities that do not require review pursuant to the PA. However, these are the kinds of issues that need to be addressed in consultation and based on the specific circumstances at the installation.

The preface to the agreement should also reference any existing Memoranda of Agreement or Programmatic Agreements whose stipulations the installation is still required to fulfill. Accordingly, the consultation to develop a PA must take into account such existing commitments, and or may terminate old agreements. Since a programmatic agreement establishes a long-term program that may take some time to implement, every agreement should include a section on interim procedures. These procedures should outline a simplified Section 106 review process that will be in effect until the other stipulations are fulfilled. The duration for the interim procedures should be directly related to the installation's completion of critical steps in program development outlined below.
The following language is inserted after the prefatory language to begin the stipulations section of the PA.

STIPULATIONS

The Installation Commander, on behalf of the Army, shall ensure that the following stipulations are implemented:

I. Planning and Coordination of Installation Activities

A. Personnel

1. The Army shall employ, maintain a contract with, or, obtain through other means, qualified professionals that meet the *Secretary of the Interior's Professional Qualifications Standards* (48 FR 44738-9), in disciplines appropriate to the installation's historic properties. The installation commander shall ensure that the qualified professionals are in place or available for execution of this PA.

The installation commander shall ensure that the Cultural Resources Manager (CRM) participates in installation-level planning for projects and activities that may affect historic properties. The installation commander shall ensure that the CRM review all undertakings, which are carried out according to the terms of this PA.

B. Planning

1. By January 1, 1999, the installation commander shall ensure that installation documents are analyzed by the CRM to identify specific undertakings that may be subject to review pursuant to the terms of this PA over a 5-year planning cycle. The documents to be analyzed shall include but are not limited to the Master Plan, military construction plans, troop training and range operation plans, Integrated Natural Resource Management Plans, ITAM program plan, tenant activities, and historic property renovation and demolition plans that are scheduled for implementation within 5 years of the execution date of this PA.

2. The installation commander shall ensure that schedules and priorities are established and documented for identification, evaluation, and treatment of historic properties that might be affected by the herein identified undertakings. The installation commander shall ensure that all relevant offices at [name of installation] are informed of the schedules and priorities, the potential of these undertakings to affect historic properties, the requirement to ensure that an analysis of alternatives is fully considered as early as possible in project planning, and of the requirement for review of the undertaking pursuant to this PA.

3. The installation commander shall ensure that the herein identified undertakings and all related activities are planned, reviewed, and carried out according to the terms of this PA. The installation commander shall include a list of undertakings in the annual report required pursuant to Stipulation * **[reference the section regarding annual reporting].**

C. Review of undertakings identified in the 5-year planning cycle

1. The installation commander shall ensure that the CRM, at a minimum, reviews all proposed undertakings identified in the installation's 5-year planning cycle to ensure that the planning and implementation of these undertakings is according to this PA. The installation commander shall ensure that the proponent of the undertaking addresses the comments of the CRM and revises project plans and specifications accordingly.

CRM Reviews:

This review is conducted to identify potential issues early in the planning process. Throughout the planning and execution of all projects, whether included in the 5-year plan or proposed subsequent to the plan, the CRM must review all undertakings. Accordingly, the PA must provide for CRM reviews of all programs and individual undertakings. The nature of such systems should be designed to accommodate the installation's decision-making process.

A review process must be developed and identified in the PA. The process should specify that all project plans and specifications, work orders, or other planning documentation be submitted to the CRM for a specified time period. All such projects must be carried out according to applicable standards developed in consultation with the SHPO. For example, the Army and the SHPO may decide to tailor the Secretary of Interior's Standards for Rehabilitation to the properties at the installation. These standards should be appended to the PA. The Army must then commit to conducting all projects according to these standards. CRM review should ensure that all projects are in conformance with these standards. The CRM review should replace the SHPO's review and be so stipulated in the PA.

Project Monitoring:
There must also be provisions for the CRM to monitor projects. In certain instances, proponents decide that a project can be accomplished more efficiently with slight modifications that turn out to have a tremendous impact on historic properties. For example, a slight modification to a contract for masonry repair could result in damage to the historic masonry. Therefore, the installation must commit to monitoring all of its undertakings to ensure that they are carried out according to approved plans and specifications.

Resolution of Adverse Effects:
The PA must also contain a process for resolving those projects which the CRM determines do not meet the applicable standards. The project must either be modified according to the standards or the project must be subject to consultation according to the procedures set forth in 36 CFR 800.4 through 800.6, or through alternate procedures that are stipulated in the PA.

Activities Subject to Review:
Actions that must include Council consultation and comment are:
Those with significant public objection or controversy;
Those that will adversely affect a National Historic Landmark;
Those for which an adverse effect cannot be successfully resolved in consultation.

Exempt Activities:
It may be appropriate to include in the body of the PA or appended to the PA a list of activities that are exempt from review. This list should be the subject of consultation and should be given careful consideration by the consulting parties.
Examples of activities that could be exempt include—

Repair of existing architectural elements, or if beyond repair, then replacement in kind to exactly match the existing materials and design.
Replacement or installation of caulking and weather-stripping around windows, doors, walls, and roofs.

Installation of mechanical equipment that is not visible and/or will not require the installation of ductwork.

Installation of fire and smoke detectors.

Continued military use and operation of impact areas, firing ranges, and other designated "surface danger zones."

II. Identification and Evaluation

A. To meet its identification and evaluation responsibilities for historic properties, the installation, in consultation with the [name of State] SHPO, shall complete the following actions within # years of execution of this PA. All identification and evaluation shall be conducted according to the *Secretary of the Interiors Standards and Guidelines for Archaeology and Historic Preservation* or according to alternate standards developed and included in the PA.

Most installations have completed some level of inventory and evaluation of historic properties and a 2-year time frame to organize this information and complete any remaining identification is not unreasonable. However, if there are extenuating circumstances, and this deadline cannot be met, an alternative should be decided in consultation and included here.

B. Historic context and database

1. The installation shall develop a historic context for [name of installation] that takes into account national, State, and local themes. The installation historic context shall consider Army- and major command-wide historic contexts, as appropriate, and shall define the installation's role within these broader contexts. The installation historic context shall serve as the basis for updating existing National Register nominations according to AR 200-4, and formal determinations of eligibility, identifying, and evaluating historic properties on the installation, and for developing an inventory, computer database of historic properties, and predictive models. The Army shall seek the views of the SHPO in developing and finalizing the installation historic context. The Army may also seek the views of any interested Indian tribes or Native Hawaiian organizations and other knowledgeable parties.

2. Based upon the installation historic context, the installation shall update or develop, as appropriate, a database, of available historic, prehistoric, ethnohistoric, landscape, and environmental data to provide a context within which to evaluate historic properties and to develop projections about the distribution and nature of historic properties that may exist on the installation.

3. Prepare a map of the installation [GIS, if available] indicating the location of all historic properties that are listed in or determined eligible for listing in the National Register.

4. Provide all relevant offices at the installation with a copy of the map of historic properties, a summary of the historic properties at the installation, and guidance regarding the appropriate office or personnel where historic property information is available.

The following stipulations related to identification and evaluation are separated into buildings and structures, archeological properties, and properties of traditional religious and cultural importance. For installations that have numerous historic properties, this kind of distinction may be useful in managing properties. All programmatic agreements must include a section addressing identification and evaluation of historic properties.

C. Identification and evaluation of historic districts, buildings, structures, landscapes, and objects (above-ground properties)

1. The installation shall, in consultation with the SHPO and in the implementation of undertakings pursuant to this PA, clarify boundaries and identify contributing or individually eligible above-ground historic properties. The installation commander shall prepare the revised nomination[s] according to AR 200-4(3-2b). The Army shall submit the updated nomination to the National Register according to 36 CFR Part 61 and AR 200-4.

2. The installation shall, prior to the implementation of undertakings subject to this PA, complete identification and evaluation, according to this agreement, of above-ground properties, including those that may be contributing properties to historic districts and those that may be individually eligible for listing in the National Register. According to Stipulation * **[reference the section regarding planning]**, the installation shall identify and prioritize those areas of the installation that are scheduled for new construction, demolition, excessing, or other proposed undertakings to ensure that surveys and analyses of alternatives are completed early in the planning processes for these activities. Inventory efforts shall include, but not be limited to, the examination and synthesis of existing information such as photographs, maps, and drawings.

3. If inventory and evaluation results in the identification of properties that are eligible for the National Register, the installation shall update its existing inventory to include these properties and shall prepare and process National Register nomination forms according to AR 200-4(3-2b) and 36 CFR Part 61. If the reevaluation of above-ground historic properties results in changes in the existing inventory (the addition or removal of historic properties), the installation shall update the existing inventory to reflect these changes. The installation shall notify the SHPO, within 30 days, that the update is complete. The installation shall provide the SHPO with a completed inventory, either in electronic format or hard copy, if so requested by the SHPO. The installation shall update the inventory every 5 years and whenever the status of a historic property changes and shall notify the SHPO of such changes.

D. Identification and Evaluation of Archeological Properties

1. The installation, in consultation with the (name of State) SHPO and in the implementation of undertakings pursuant to this PA, shall clarify boundaries to reflect the integrity of archeological sites determined eligible for listing or listed in the National Register. The installation commander shall prepare revised nomination[s] according to AR 200-4(3-2b). The Army shall submit the updated nomination to the National Register according to 36 CFR Part 61.

2. Based on the information in the database, the Army shall develop a program for completing inventories of installation lands and for evaluating archeological properties for historic significance according to this PA. According to Stipulation * **[reference the section regarding planning]**, the program shall identify those areas of the installation that are used for training exercises, testing, new construction, timber harvesting, or other ground disturbing activities. Prioritization of management activities, including inventories and analyses, shall be based on the likelihood and intensity of impacts to historic properties. Inventory efforts shall include, but not be limited to, the examination and synthesis of existing information such as previous archeological and geomorphological survey data, photographs, maps, and drawings (planning level survey information).

3. If inventory efforts result in the identification of properties that are eligible for the National Register, the Army shall update its existing inventory to include these properties and shall prepare and process National Register nomination forms according to AR 200-4(3-2b) and 36 CFR Part 61. The Army shall notify the SHPO, within 30 days, that the update is complete and provide the SHPO with a completed inventory, either in electronic or hard copy, if so requested by the SHPO. The Army shall update the inventory every 5 years and whenever the status of a historic property changes and shall notify the SHPO of such changes.

4. If inventories of areas proposed for ground-disturbance result in the identification of properties eligible for the National Register, the Army shall fulfill the requirements of

Stipulations * prior to undertaking the proposed activity. **[The nature of the undertaking and the affected properties will determine which set of procedures to follow next.]**

The following stipulations address consultation with Indian tribes or Native Hawaiian organizations to identify and evaluate historic properties of traditional religious and cultural importance.

E. Identification and evaluation of historic properties of traditional religious and cultural importance.

1. The installation commander shall identify Indian tribes or Native Hawaiian organizations that may ascribe traditional religious and cultural importance to historic properties within the installation.

2. The installation commander shall consult with such parties to solicit their assistance and advice in identifying properties of traditional religious and cultural importance within the installation, in identifying relevant preservation issues, and in resolving concerns regarding confidentiality of information on historic properties.

3. In consultation with those Indian tribes or Native Hawaiian organizations herein identified, the installation commander shall develop a program for completing inventories of installation lands to identify and evaluate properties of traditional religious and cultural importance according to this PA. According to Stipulation ***[reference the section regarding planning]**, the program shall identify those areas of the installation that are used for training exercises, testing, new construction, timber harvesting, or other ground disturbing activities to ensure that inventories and analyses of alternatives are completed early in the planning processes for these activities. Inventory efforts shall include, but not be limited to, the examination and synthesis of existing information, consultation with appropriate members of Indian tribes or Native Hawaiian organizations and field investigations conducted in an appropriate manner.

4. If inventory efforts result in the identification of properties that are eligible for the National Register, the installation shall update its existing inventory to include these properties and, at the request of the appropriate group, the existence and location of such properties shall be available only for Army planning purposes and shall not be disclosed to the public. The installation shall notify the SHPO, within 30 days, that the update is complete. The installation shall provide the SHPO with a completed inventory, either in electronic format or hard copy, if so requested by the SHPO. To the extent compatible with Indian tribes and Native Hawaiian organizations involved, the installation shall prepare documentation for planning purposes and process National Register nomination forms according to AR 200-4(3-2b) and 36 CFR Part 61. The installation shall update its inventory every 5 years and whenever the status of a historic property changes, shall notify the SHPO of such changes.

5. If surveys of areas proposed for ground-disturbance result in the identification of properties eligible for the National Register that are of traditional religious or cultural importance to an Indian tribe or Native Hawaiian organization, the installation shall fulfill the requirements of Stipulation * **[reference the sections regarding treatment of properties of religious and cultural significance]** prior to undertaking the proposed activity. The installation shall also consider indirect effects such as noise, pollution, limited access, and other effects resulting from installation activities. Efforts to identify properties shall be made whenever there could be such an effect if properties are present.

III. Treatment of historic districts, buildings, structures, landscapes, and objects listed on or eligible for listing on the National Register of Historic Places.

A. Design Guidelines

1. The installation, in consultation with the SHPO, shall develop Design Guidelines *(Design Guidelines)* that preserve the integrity of significant viewsheds and landscapes within the installation identified pursuant to Stipulation * **[reference the section regarding planning]** and that ensure that rehabilitation and new construction are compatible with the historic and architectural qualities of historic properties at the installation. The *Design Guidelines* shall address issues of relationships, space, scale, massing, color, and materials, and be responsive to the recommended approaches in the Secretary of the Interior's *Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings*, the Secretary of the Interior's *Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes*, and to the *Treatment Standards*. The Design Guidelines shall be drafted by [date] and submitted to the SHPO for review and comment. If the SHPO does not respond within 30 days from receipt of the draft Design Guidelines, the installation shall assume that the SHPO concurs. Should the SHPO propose changes within 30 days, the installation shall consider the recommendations and revise the Design Guidelines as appropriate, or consult to resolve differences.

B. Rehabilitation

1. The installation shall develop plans for, and conduct rehabilitation of historic properties according to the *Design Guidelines* and *Treatment Standards*. Plans and specifications shall be submitted to the installation cultural resource manager responsible for reviewing architectural plans. If the CRM accepts the plans as they are submitted, or recommends modifications to the project to ensure that the project conforms to the *Design Guidelines* and *Treatment Standards*, and the installation makes such modifications, the project will not require further review pursuant to this PA.

2. The installation shall maintain a written record of all rehabilitation work performed according to the *Design Guidelines* and *Treatment Standards* and shall make this record available to the SHPO in its annual report **[or inform the SHPO at the time of project planning; this should be determined in consultation as the PA is developed and will be dependent upon the ability of the installation to assess whether projects conform to the guidelines. If there is any question, the SHPO should maintain review role]**. The installation shall utilize information included in the record in determining appropriate schedules for routine maintenance and treatments.

3. Should the installation CRM determine that a rehabilitation activity or project will not conform to the *Design Guidelines* and *Treatment Standards*, the installation commander shall notify the SHPO, and initiate consultation to resolve the adverse effect pursuant to 36 CFR Part 800.

C. Maintenance

1. The installation shall conduct cyclical inspections **[need to determine the time frame for these in consultation and based upon the nature and integrity of historic properties]** of historic properties and maintain a record of the results of the inspection. The installation shall use the inspection reports to identify maintenance problems and to prepare work/job orders and plans for maintenance and rehabilitation.

2. The installation shall conduct all maintenance of historic properties according to the *Treatment Standards* attached at appendix *. All such maintenance activities and the application of the *Treatment Standards* shall be monitored by the installation CRM to ensure conformance. If the CRM determines that maintenance is not being performed according to the *Treatment Standards*, the CRM shall notify the installation commander. The installation commander shall ensure that maintenance practices are modified according to the *Treatment Standards* and shall notify the SHPO of these

modifications, or comply with 36 CFR Part 800.4 through 800.6.

3. The installation shall maintain a record of maintenance activities and make this record available to the SHPO in its annual report. The installation shall apply the information included in the record in determining maintenance schedules and rehabilitation priorities.

Additional Stipulations in the PA May Address the Following:

Review of new construction:
It is suggested that a process be established for the review of all new major construction (buildings, roads, utilities, etc.). This type of undertaking could result in multiple effects including physical effects to archeological properties or landscape features or traditional cultural properties and visual effects to historic buildings, structures, landscapes, districts, or traditional cultural properties. New construction should include the consideration of historic properties early in the planning stages and should involve interested parties throughout the process.

Environmental remediation:
Another activity or program that may require a unique set of procedures is environmental remediation. The kinds of remediation the installation expects to perform should be discussed in consultation with the SHPO, Council, and other appropriate parties to determine if review procedures for new construction or rehabilitation might address the nature of the remediation work. If not, it is suggested that a separate set of provisions be developed.

Treatment of Archeological Properties Eligible for or Included in the National Register of Historic Places (Archeological Properties):
Most PAs should include provisions for the protection and treatment of archeological properties. The installation should monitor the condition of archeological sites on a regular basis, document the condition, and have a procedure for determining the appropriate treatment if there is evidence of damage. The PA should also include provisions for in-place preservation of archeological properties. Data recovery should be employed only when there are no other options for treating archeological properties. Treatment of archeological properties requires consultation with interested parties such as Indian tribes or Native Hawaiian organizations that may have an interest in such properties.

Appropriate protection and treatment measures for archeological properties is an issue that warrants extensive and careful attention by the consulting parties. Installation planning processes should include early consideration of effects to archeological properties.

Consultation with Indian tribes and Native Hawaiian organizations:
The installation should also develop procedures for consultation with Indian tribes or Native Hawaiian organizations who attach traditional religious and cultural importance to historic properties within the installation or that will be affected by installation activities. These procedures should be responsive to any protocols or guidelines established by the tribe and should be integrated into the overall project planning and review processes outlined in the agreement. They are meant to ensure that Indian tribes and Native Hawaiian organizations have a consultation role when a historic property of religious and cultural significance may be affected by an Army action. The procedures should be developed in consultation with each tribe or organization. Some suggested stipulations for such procedures are as follows:

D. Treatment of historic properties of traditional religious and cultural importance to an Indian Tribe or Native Hawaiian organization

1. Early in the planning process, and before approving the undertaking, the installation commander shall initiate consultation with any Indian tribe or Native Hawaiian organization that attaches traditional religious and cultural importance to a historic property that may be affected by the proposed undertaking. Such consultation should follow any pre-existing agreements or arrangements that define how such consultation should proceed. The installation commander shall ensure that sufficient time is allowed during project planning to conduct such consultation.

2. Consultation shall include documentation regarding the proposed undertaking, including a description of the proposed undertaking, potential effects to historic properties, and the project schedule.

3. The installation commander shall ensure that the views and recommendations of the Indian tribe or Native Hawaiian organization regarding the effects of the undertaking and any proposed mitigation are taken into account in reaching a final decision about any undertaking. The installation commander shall report his decision regarding the undertaking to the Indian tribe or Native Hawaiian organization.

4. The installation commander shall withhold information about the location or character of a historic property of traditional religious and cultural importance if disclosure may cause a significant invasion of privacy or impede the use of a traditional religious site by practitioners.

Treatment of Human Remains:
Programmatic Agreements should also include procedures for the treatment of human remains other than those covered by NAGPRA. The views of consulting parties, particularly descendant groups, should be given deference to the maximum extent possible. A suggested approach is outlined below:

E. Treatment of human remains

1. If human remains are discovered during implementation of an undertaking or program activity, the installation shall ensure that all activity in the area immediately surrounding the discovery ceases and the appropriate installation CRM is notified of the find. The Army shall ensure that the remains are secured from further disturbance or vandalism until a plan for treatment has been developed.

2. If the installation determines that the remains are Native American or Native Hawaiian, the CRM shall immediately notify the installation commander to determine any actions necessary under authorities other than NHPA.

3. If the installation determines that the remains are not Native American or Native Hawaiian, and do not warrant criminal investigation, the installation shall immediately notify the SHPO and consult with the SHPO to identify descendants, a descendant community, or other interested parties, if any. The Army, in consultation with the SHPO and any interested parties, shall develop a plan for the respectful treatment and disposition of the remains.

Unexploded Ordnance:
Continued use of impact areas, firing ranges, and other designated surface danger zones should be categorically excluded from further consideration. However, the removal of unexploded ordnance to clear an area for a new use may be an undertaking and require Section 106 review. Accordingly, the installation should consult with the SHPO and Council to develop a special set of procedures for all activities associated with removing ordnance.

Tenant Activities:
Every installation that has tenant organizations should include in its programmatic agreement a section that addresses how the installation will ensure that tenant activities are conducted according to the terms of the agreement. Suggested language follows and should be tailored to the specific arrangements the installation has with its tenant activities:

IV. Tenant activities A. The installation shall ensure that the terms of this PA apply to all tenants and tenant activities on the

installation. The installation shall inform tenants of their responsibilities regarding historic properties and the terms of this PA.

Involvement of Interested Parties

All programmatic agreements should include a plan for involvement of interested parties in installation activities and programs that may affect historic properties. The installation should consult with the SHPO, interested parties, and the Council to determine the appropriate level and kind of participation. The provisions outlined below are introductory only and should serve only as examples of the kinds of provisions that could be developed. If appropriate, the agreement could also include additional provisions for consultation with, or involvement of, Indian tribes or Native Hawaiian organizations. It should be noted that interested parties are not necessarily consulting parties and signatories to PAs. Suggested language is as follows:

V. Involvement of Interested Parties

A. The installation, in consultation with the SHPO, shall identify parties that may be interested in the effects of Army undertakings on historic properties and develop a plan for involving such parties, as appropriate, in consultations to resolve adverse effects.

B. The installation, in consultation with the SHPO, shall develop a public participation program that includes, but is not limited to, popular publications regarding historic preservation activities at the installation, [and whatever else is appropriate for the installation, its mission, security, etc.]

The following provisions would apply to Indian tribes and Native Hawaiian organizations:

C. When an undertaking will affect Indian lands, the installation shall invite the Indian tribe or Native Hawaiian organization to be a consulting party and to concur in any agreement.

D. A Tribal Historic Preservation Officer (THPO) may participate in activities in lieu of the SHPO with respect to undertakings on Tribal lands.

E. When an undertaking may affect historic properties of traditional cultural and religious importance to an Indian tribe or Native Hawaiian organization on non-Indian lands, the installation shall afford the tribe the opportunity to participate as interested persons.

The Following Administrative Stipulations are Generally Included in All PAs:

VI. Administrative Stipulations

A. Alterations to Project Documentation. The installation shall not alter any plan, project specifications, or other document that has been reviewed and commented on pursuant to this PA, except to finalize documents commented on in draft, without first affording the appropriate party the opportunity to review the proposed change and determine whether it is consistent with the original document or requires further consultation. If one or more of the parties determines that further consultation is required, the Army shall consult according to the appropriate stipulations of this PA.

B. Anti-Deficiency Act Compliance. The stipulations of this PA are subject to the provisions of the Anti-Deficiency Act. If compliance with the Anti-Deficiency Act alters or impairs the Army's ability to implement the stipulations of this PA, the Army will consult according to the amendment and termination procedures found at Stipulations * and * **[reference amendment and termination sections]** of this PA.

C. Reporting and Annual Review

1. The Installation Commander shall provide the SHPO and the Council [add other parties as determined in consultation] with an annual report on or before January 1 of each year summarizing activities carried out under the terms of this PA.

a. Annual reports shall include a list of projects and program activities that affected historic properties, a summary of mitigation or treatment measures implemented to address the effects of undertakings, and a summary of consultation activities and the views of the SHPO and interested parties where appropriate.

b. The signatories to this PA shall review this information to determine what, if any, revisions or amendments to the PA are necessary.

2. The installation commander shall ensure that the annual report is made available for public inspection, that interested members of the public are made aware of its availability, and that interested members of the public are invited to provide comments to the Army, the SHPO, and the Council.

D. Dispute Resolution

1. Should any signatory to this PA object to any action carried out or proposed by the Army with respect to implementation of this PA, the installation shall consult with the objecting party to resolve the objection. If the objection cannot be resolved through consultation, the installation shall forward all documentation relevant to the dispute to the Council. Within thirty calendar days after receipt of all pertinent documentation, the Council shall exercise one of the following options:

a. Advise the Army that the Council concurs in the Army's proposed final decision, whereupon the Army will respond to the objection accordingly;

b. Provide the Army with recommendations, which the Army shall take into account in reaching a final decision regarding its response to the objection; or,

c. Notify the Army that the Council will comment pursuant to 36 CFR Section 800.(6)(b), and proceed to comment. The resulting comment shall be taken into account by the Army according to 36 CFR Section 800.6(c)(2) and Section 110(l) of NHPA.

2. Should the Council not exercise one of the above options within 30 days after receipt of all pertinent documentation, the Army may assume the Council's concurrence with its proposed response to the objection.

3. The Army shall take into account any Council recommendation or comment provided according to this stipulation with reference only to the subject of the objection; the Army responsibility to carry out all actions under this PA that are not the subject of the objection shall remain unchanged.

4. Should an objection pertaining to this PA be raised at any time by a member of the public, the Army shall notify the parties to this PA and take the objection into account, consulting with the objector and, should the objector so request, with any of the parties to this PA to resolve the objection.

E. Monitoring

The SHPO and the Council may monitor any activities carried out pursuant to this Agreement, and the Council will review any activities if so requested. The installation commander will cooperate with the SHPO and the Council should they request to monitor or to review project files for activities carried out pursuant to this Agreement.

F. Termination of the Programmatic Agreement.

1. If the Installation Commander determines that the Army cannot implement the terms of this PA, or if the SHPO or Council determines that the PA is not being properly implemented, the Army, the SHPO, or Council may propose to the other parties to this PA that it be terminated.

2. The party proposing to terminate this PA shall so notify all parties to this PA, explaining the reasons for termination and affording them at least 30 days to consult and seek alternatives to termination.

3. Should such consultation fail and the PA be terminated, the Army shall:

a. Consult according to 36 CFR Section 800.13 to develop a new PA; or,

b. Comply with 36 CFR Sections 800.4 through 800.6 with regard to each undertaking

G. Amendment of the Programmatic Agreement Any party to this PA may propose to the Army that the PA be amended, whereupon the Army shall consult with the other parties to this PA to consider such amendment. 36 CFR Section 800.13 shall govern the execution of any amendment.

H. Compliance with the Programmatic Agreement In the event that the Army can not carry out the terms of this Programmatic Agreement, the Army shall comply with 36 CFR Part 800 with regard to each individual undertaking at [name of installation].

I. Expiration and Renewal of the Programmatic Agreement This Programmatic Agreement shall take effect on the date it is signed by the last signatory and will remain in effect until [fill in a date 5 years from now] unless terminated pursuant to Stipulation * **[reference stipulation regarding termination of the PA]**. If not renewed or extended, this Programmatic Agreement will be terminated on December 31, [fill in the year]. No extension or modification will be effective unless all signatories have agreed in writing.

J. If the terms of this PA have not been implemented by [fill in the date], this PA shall be considered null and void. In such event the Army shall notify the parties to this PA, and if it chooses to continue the PA, shall reinitiate review of this PA according to 36 CFR Part 800.13.

Execution and implementation of this PA evidences that the Army has afforded the Council a reasonable opportunity to comment on the closure and disposal of excess and surplus property at (name of installation), and that the Army has taken into account the effects of the undertaking on historic properties. Execution and compliance with this programmatic agreement fulfills the Army's Section 106 responsibilities regarding the closure and disposal of (name of facility).

DEPARTMENT OF THE ARMY

By: Date:

(Army installation commander)

(Name) **STATE HISTORIC PRESERVATION OFFICER**

By: Date:

State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: Date:

Executive Director

Concur:

(When applicable place signature blocks for concurring parties here.)

Figure C-2. PA authentication (signature page)

The following language can be used for either Memoranda of Agreement (MOA) or Programmatic Agreements (PA) involving the disposal of Army BRAC properties listed in or determined to be eligible for inclusion in the National Register of Historic Places. In those instances where historic property inventories have been completed for BRAC disposal parcels, an MOA would usually be the appropriate agreement format. A PA would be the proper agreement format to use if additional historic property inventory studies must be completed prior to the disposal of Army BRAC parcels.

Although model historic preservation covenants are supplied with this document, not all State Historic Preservation Officers are able or willing to hold or enforce such covenants. Accordingly, it may be necessary for the SHPO to assign such protective covenants to a third party that possesses such authority or is able to enforce them, especially for those states which do not give qualified agencies and organizations generic authority to hold preservation or conservation easements in gross.

MEMORANDUM OF AGREEMENT/PROGRAMMATIC AGREEMENT
(Choose MOA or PA title above as appropriate)

among

UNITED STATES ARMY,

(Name of State) **STATE HISTORIC PRESERVATION OFFICER,**

and ADVISORY COUNCIL ON HISTORIC PRESERVATION

for the

Closure and Disposal of (Name of Installation), (Name of State)

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Whereas the United States Army (Army) is responsible for implementation of applicable provisions of the Defense Base Closure and Realignment Act of 1990 (P.L. 101-510) as amended, and is proceeding with the (realignment/closure) of (name of installation), and consequent disposal of excess and surplus property in a manner consistent with the requirements of the applicable Defense Base Closure and Realignment Commission recommendation; and

Whereas the Army has determined that leasing, licensing and/or disposal of all or portions of (name of installation), in (name of State), may have an effect upon historic properties that have been designated as (indicate whether properties are in, or eligible for listing in, the National Register of Historic Places), and has consulted with the (name of State) State Historic Preservation Officer (SHPO), and the Advisory Council on Historic Preservation (Council) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. Section 470(f), Section 110(f) of the same Act (16 U.S.C. Section 470h-2[f]), and Section 111 of the same Act (16 U.S.C. Section 470h-3); and

Whereas historic properties at (name of installation) are at this time known to include (list known properties on or considered to be eligible for the National Register of Historic Places, or note that a complete list of such properties can be found at Attachment A); and

Whereas the Army has completed (list completed historical and archival investigations and archeological surveys which support disposal of the BRAC property); and

Whereas interested members of the public, including (list agencies and groups who have been consulted as part of the Section 106 process), and Native Americans, have been provided opportunities to comment on the effects this base closure may have on historic properties at (name of installation) through public hearings, consultation meetings, and other means; and

[Other Whereas clauses can be inserted here as appropriate.]

NOW, THEREFORE, the Army, the SHPO, and the Council agree that the undertaking described above shall be implemented according to the following stipulations to take into account the effect of the undertaking on historic properties.

Figure C-3. Sample memorandum of agreement/programmatic agreement

STIPULATIONS—The Army will ensure that the following measures are carried out:

I. Identification and evaluation

The types of identification and evaluation measures that may need to be conducted will vary for each installation depending on the completeness of the installation historic properties inventory at the time of the closure announcement and the types of historic properties present at the facility.

The numbering of stipulations within this section will vary, depending on the number and types of additional studies or mitigation measures that are to be carried out by the Army, or other parties to the agreement. If all historic property inventory measures have been completed for BRAC affected properties, this section can be omitted and Section II below can become the first stipulation of the agreement document.]

[The following agreement text assumes that historic properties (National Register-eligible properties) are present on the closing facility. The agreement language should be altered appropriately to address the types of resources actually present.]

II. Caretaker maintenance of historic properties

The Army will ensure the provision of caretaker building maintenance, security, and fire protection pending the transfer, lease, or sale of historic properties at (name of installation). These caretaker activities shall be conducted according to Public Works Bulletin

420-10-08 (17 March 1993), Facilities Operation, Maintenance, and Repair Guidance for Base Realignment and Closing Installations (and subsequent revisions). The Army will ensure the protection of archeological sites on, or eligible for inclusion on the National Register, and will develop a plan to protect these sites, and will provide the SHPO with a copy of the archeological site protection plan for comment.

III. **Licenses and leases**

Licenses or leases, to other than Federal agencies, of historic properties will include language provided in Attachment B of this agreement as appropriate.

IV. Disposal of (name of installation) properties

A. Transfer of real property that does not contain historic properties.

In leasing or disposing of real property and improvements--for which identification and evaluation have been completed in consultation with the SHPO--that do not contain historic properties, any portion of an historic property, archeological sites, or any portion of an archeological site, no further action is necessary under this agreement. The Army will, however, promptly notify the SHPO that such a transfer has been completed.

B. Assignments to other federal Agencies.

In assigning historic property (ies) directly to another Federal agency by a transfer authority such as The Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.), the receiving Federal agency will be deemed responsible for compliance with 36 CFR Part 800 and any other applicable State or Federal laws and regulations with respect to the maintenance and disposal of these properties. The Army will promptly notify the SHPO and Council in writing of each Federal agency that has requested and been assigned such property.

C. Public benefit conveyances to non-Federal recipients.In disposing of historic property(ies) directly to a non-Federal recipient--at the request of a sponsoring Federal agency, and pursuant to the Public Benefit Conveyance authorities contained in the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.), and other applicable authorities--appropriate preservation covenants (found at Attachments C and D) will be incorporated in the transfer instrument(s). The Army will promptly notify the SHPO and Council in writing of each such transfer of historic and or archeological-site property.

D. Economic Development Conveyances to LRAs

In disposing of historic property(ies) to a Local Redevelopment Authority (LRA) pursuant to the Economic Development Conveyance authority contained in the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510, as amended), appropriate preservation covenants (found at Attachments C and D) will be incorporated in the transfer instrument(s). The Army will promptly notify the SHPO and Council in writing of each such transfer of historic and or archeological-site property.

E. Competitive Sales

In disposing of historic properties via a competitive sale transfer authority, the Army's bid solicitation will contain the following information:

(1) Information on the property's historic, archeological, and or architectural significance, identifying elements, or other characteristics of the property that should be given special consideration in planning;

(2) Information on financial incentives for rehabilitation of historic structures;

(3) Information indicating that appropriate preservation covenants will be incorporated in the instrument transferring title to the property, and that these covenants will be substantively identical to those contained in Attachments C and or D of this agreement (as appropriate), unless modifications are authorized pursuant to the process described in paragraph IV. G, below, and as required to accord the covenants with State law.

In developing the above information for inclusion in its initial bid solicitation document, the Army will solicit the advice and assistance of the SHPO. The Army need not solicit such advice and assistance in preparing subsequent solicitation documents, unless such documents contain historic properties information that differs materially from that included in the initial solicitation document. The Army will notify the SHPO and Council in writing of each such transfer of historic and or archeological-site property.

F. Negotiated sales

In disposing of historic properties via a negotiated sale transfer authority, the Army will provide a written document ("negotiation document") to the negotiating party that sets forth the same information described in subparagraphs IV E (1), (2) & (3), above. In developing this information for inclusion in the negotiation document to be provided to the initial negotiating party, the Army will solicit the advice and assistance of the SHPO. The Army need not solicit such advice and assistance in preparing negotiation documents for subsequent negotiating parties, unless such documents contain historic properties information that differs materially from that included in the document provided to the initial negotiating party. The Army will notify the SHPO and Council in writing of each such transfer of historic and or archeological-site property.

G. Covenant modification to facilitate transfer

If the Army cannot transfer the property or properties that contain historic structures pursuant to the provisions set forth in paragraphs IV. C, D, E, and F above, then the Army will consult with the concerned SHPO, the ACHP, and (with respect to transfers pursuant to paragraphs IV C, D, and F) the prospective transferee(s) to determine appropriate modifications to the preservation covenants contained in Attachments C and or D that are necessary to complete transfer of the property(ies) within established disposal timelines. Such modifications shall be limited to those that are reasonably necessary to effect transfer of, or effectively market, the concerned property within established timelines.

V. Environmental remediation

[The following stipulations assume that the affected facility is subject to environmental remediation projects which have the potential to affect properties on or eligible for the National Register. Unless it can be positively shown that no environmental remediation will be required for the closing facility, these stipulations should be included in the agreement document.]

A. **[Briefly describe here the types of environmental remediation measures that can be expected to occur at the affected facility.]** Proposed remediation plans will be coordinated between the (name of Army caretaker organization) and the (name of installation) BRAC Environmental Coordinator (BEC) to identify any effects to historic properties, known or yet to be discovered. If the Army determines that historic properties will be affected by a proposed remediation plan, the Army will consult with the SHPO to determine what steps should be taken, if any, with respect to those effects.

B. Proposed remediation plans that the Army determines may affect historic properties will be submitted to the SHPO for review and comment according to the following procedures:

(1) Proposed remediation plans or supplemental documentation furnished by the Army will provide descriptions of any potential conflicts between remediation and preservation of historic properties;

(2) In situations where the Army determines that there is an immediate threat to human health, safety, or the environment, and that remediation must proceed without first taking steps

to preserve historic properties, then the Army's reasons for so determining will be fully described;

(3) In situations where the Army determines that there is not an immediate threat to human health, safety, or the environment, and that implementation of its proposed remediation plan will result in the demolition or substantial alteration of any historic property, then the Army shall either modify its remediation plan to avoid the adverse effect or implement data recovery and or recordation in consultation with the SHPO, taking into account health and safety constraints inherent in properties containing hazardous materials, resource availability, and any other relevant constraints.

VI. Anti-Deficiency Act

The stipulations of this agreement are subject to the provisions of the Anti-Deficiency Act. If compliance with the Anti-Deficiency Act alters or impairs the Army's ability to implement the stipulations of this agreement, the Army will consult according to the amendment and termination procedures found at Sections IX and X of this agreement.

VII. Status reports

Until such time as all (name of installation) historic and or archeological-site properties have been transferred from Army control according to the terms of this agreement, the Army will provide an annual status report to the Council and (name of State) SHPO to review implementation of the terms of this agreement and to determine whether amendments are needed. If amendments are needed, the signatories to this agreement will consult, according to Stipulation VIII of this agreement, to make such revisions.

VIII. Dispute resolution

A. Should the (name of State) SHPO and or the Council object within 30 days to any plans or other documents provided by the Army or others for review pursuant to this agreement, or to any actions proposed or initiated by the Army pursuant to this agreement, the Army shall consult with the objecting party to resolve the objection. If the Army determines that the objection cannot be resolved, the Army shall forward all documentation relevant to the dispute to the Council. Within thirty (30) days after receipt of all pertinent documentation, the Council will either:

(1) Provide the Army with recommendations, which the Army will take into account in reaching a final decision regarding the dispute; or

(2) Notify the Army that it will comment pursuant to 36 CFR 800.6(b), and proceed to comment.

Any Council comment will be taken into account by the Army according to 36 CFR 800.6(c)(2) with reference to the subject of the dispute.

B. Any recommendations or comment provided by the Council pursuant to Stipulation VII A above will pertain only to the subject of the dispute; the Army's responsibility to carry out all other actions under this agreement that are not the subjects of the dispute will remain unchanged.

C. At any time during implementation of the measures stipulated in this agreement by the Army, if an objection to any such measure or its manner of implementation is raised by interested persons, then the Army shall consider the objection and consult, as appropriate, with the objecting party, the SHPO, and the Council to attempt to resolve the objection.

IX. Amendments

A. The Army, (name of State) SHPO, and or Council may request that this PA be revised, whereby the parties will consult to consider whether such revision is necessary.

B. If it is determined that revisions to this PA are necessary, then the Army, the Council, and the SHPO shall consult pursuant to **[36 CFR Part 800.5(e)(5), if this agreement is an MOA or 36 CFR Part 800.13 if this agreement is a PA]**, as appropriate, to make such revisions. Except that, reviewing parties must comment on, or signify their acceptance of, the proposed changes to the PA in writing within 30 days of their receipt.

X. Termination of Agreement

A. The Army, (name of State) SHPO, and or Council may terminate this PA by providing thirty (30) days written notice to the other signatory parties. During the period after notification and prior to termination the Army, the Council, and the SHPO will consult to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the Army will comply with 36 CFR 800.4 through 800.6 with regard to individual undertakings associated with the BRAC disposal action.

Execution and implementation of this PA evidences that the Army has afforded the Council a reasonable opportunity to comment on the closure and disposal of excess and surplus property at (name of installation), and that the Army has taken into account the effects of the undertaking on historic properties. Execution and compliance with this programmatic agreement fulfills the Army's Section 106 responsibilities regarding the closure and disposal of (name of facility).

DEPARTMENT OF THE ARMY

By: Date:

(name of signatory)
(rank)
(Appropriate MACOM official will sign the agreement for the Army)

(Name) **STATE HISTORIC PRESERVATION OFFICER**

By: Date:

State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: Date:
Executive Director

Concur:
(When applicable place signature blocks for concurring parties here.)

Figure C-4. BRAC PA authentication (signature page)

ATTACHMENT A
(Name of Installation), (Name of State)
Historic Properties on or Eligible for
the National Register of Historic Places

[List buildings or archeological sites at the affected installation which are on or have been determined to be eligible for inclusion in the National Register of Historic Places. List historic buildings by Army designated number and name if applicable. Archeological sites should be listed by official State number designation and name if applicable.]

ATTACHMENT B—**[Language to be included in lease and license agreements when historic buildings, archeological sites, districts, or other historic properties are present. Two versions are presented, one for buildings/structures and a second for archeological sites.]**

Building/Structure Lease (or License) Language

Building number(s) XXX is/are (eligible for inclusion in/listed in) the National Register of Historic Places. This/these buildings will be maintained by the Lessee (Licensee) according to the recommended approaches in the Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings (U.S. Department of the Interior, National Park Service 1992) (Standards). The Lessee (Licensee) will notify the Army of any proposed rehabilitation or structural alteration to this/these building(s) or to the landscape/landscape features and will provide a detailed description of the undertaking prior to undertaking said rehabilitation/alterations. Within 30 days of receipt of such notification and adequate supporting documentation, the Army will notify the Lessee (Licensee) in writing that the undertaking conforms to the Standards and that the Lessee (Licensee) may proceed or that the undertaking does not conform to the Standards and that the Lessee (Licensee) may not proceed. If the Army determines that the undertaking does not meet the Standards, the Army will, with the assistance of the Lessee (Licensee), fulfill the requirements of Section 106 of the National Historic Preservation Act and its implementing regulations, "Protection of Historic Properties" (36 CFR Part 800). The Lessee (Licensee) will not undertake the proposed action until the Army notifies the Lessee that the requirements of Section 106 have been fulfilled and the Lessee may proceed. If the Army objects to the Lessee's (Licensee's) proposed undertaking, the Army will notify the Lessee (Licensee) that the proposed action may not proceed.

Archeological Property(ies) Lessee (License) Language

Archeological property(ies)XXX is/are (eligible for inclusion in/listed in) the National Register of Historic Places. The Lessee (Licensee) shall ensure that the property(ies) remain(s) undisturbed. The Lessee (Licensee) will notify the Army of any proposed ground disturbance to the archeological property prior to undertaking said ground disturbance. Notification will include a detailed description of the proposed undertaking. If the Army does not object to the proposal within 30 days of receipt of such notification and adequate supporting documentation, the Army will, with the assistance of the Lessee (Licensee), initiate consultation with the SHPO according to Section 106 of the National Historic Preservation Act and its implementing regulations, "Protection of Historic Properties" (36 CFR Part 800). The Lessee (Licensee) will not undertake the proposed action until the Army notifies the Lessee (Licensee) that the requirements of Section 106 have been fulfilled and the Lessee (Licensee) may proceed. If the Army objects to the Lessee's (Licensee's) proposed ground disturbance, the Lessee shall not undertake the proposed action.

[If sufficiently defined by previous studies, those architectural

elements that contribute to a building/structure's National Register eligibility can be listed in this covenant. Restrictions on building/structure alterations can then be confined only to those elements that contribute to the eligibility of the historic property.]

ATTACHMENT C—STANDARD PRESERVATION COVENANT FOR CONVEYANCE OF PROPERTY THAT CONTAINS HISTORIC BUILDINGS AND STRUCTURES

1. In consideration of the conveyance of certain real property hereinafter referred to as (name of property), located in the (name of county), (name of State), which is more fully described as: (Insert legal description), (Name of property recipient) hereby covenants on behalf of (himself/herself/itself), (his/her/its) heirs, successors, and assigns at all times to the (name of SHPO parent organization) to preserve and maintain (name of property) according to the recommended approaches in the Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings (U.S. Department of the Interior, National Park Service 1992) to preserve and enhance those qualities that make (name of historic property) eligible for inclusion in/or resulted in the inclusion of the property in the National Register of Historic Places. If (Name of property recipient) desires to deviate from these maintenance standards, (Name of property recipient) will notify and consult with the (name of state) Historic Preservation Officer according to paragraphs 2, 3, and 4 of this covenant.

2. (Name of property recipient) will notify the appropriate (name of state) Historic Preservation Officer in writing prior to undertaking any construction, alteration, remodeling, demolition, or other modification to structures or setting that would affect the integrity or appearance of (name of historic property). Such notice shall describe in reasonable detail the proposed undertaking and its expected effect on the integrity or appearance of (name of historic property).

3. Within thirty (30) calendar days of the appropriate (name of State) Historic Preservation Officer's receipt of notification provided by (name of property recipient) pursuant to paragraph 2 of this covenant, the SHPO will respond to (name of property recipient) in writing as follows: (a) That (name of property recipient) may proceed with the proposed undertaking without further consultation; or (b) That (name of property recipient) must initiate and complete consultation with the (name of State) Historic Preservation Office before (he/she/it) can proceed with the proposed undertaking. If the SHPO fails to respond to the (name of property recipient)'s written notice, as described in paragraph 2, within thirty (30) calendar days of the SHPO's receipt of the same, then (name of property recipient) may proceed with the proposed undertaking without further consultation with the SHPO.

4. If the response provided to (name of property recipient) by the SHPO pursuant to paragraph 3 of this covenant requires consultation with the SHPO, then both parties will so consult in good faith to arrive at mutually-agreeable and appropriate measures that (name of property recipient) will implement to mitigate any adverse effects associated with the proposed undertaking. If the parties are unable to arrive at such mutually-agreeable mitigation measures, then (name of property recipient) shall, at a minimum, undertake recordation for the concerned property--in accordance with the Secretary of Interior's standards for recordation and any applicable State standards for recordation, or according to such other standards to which the parties may mutually agree--prior to proceeding with the proposed undertaking. Pursuant to this covenant, any mitigation measures to which (name of property recipient) and the SHPO mutually agree, or any recordation that may be required, shall be carried out solely at the expense of (name of property recipient).

5. The (name of SHPO parent organization) shall be permitted at all reasonable times to inspect (name of historic property) to ascertain its condition and to fulfill its responsibilities hereunder.

6. In the event of a violation of this covenant, and in addition to any remedy now or hereafter provided by law, the (name of SHPO parent organization) may, following reasonable notice to (name of recipient), institute suit to enjoin said violation or to require the restoration of (name of historic property). The successful party shall be entitled to recover all costs or expenses incurred in connection with such a suit, including all court costs and attorneys fees.

7. In the event that the (name of historic property) (ies) is substantially destroyed by fire or other casualty, or (ii) is not totally destroyed by fire or other casualty, but damage thereto is so serious that restoration would be financially impractical in the reasonable judgment of the Owner, this covenant shall terminate on the date of such destruction or casualty. Upon such termination, the Owner shall deliver a duly executed and acknowledged notice of such termination to the (name of SHPO parent organization), and record a duplicate original of said notice in the (name of county) Deed Records. Such notice shall be conclusive evidence in favor of every person dealing with the (name of historic property) as to the facts set forth therein.

8. (Name of recipient) agrees that the (name of SHPO parent organization) may at its discretion, without prior notice to (name of recipient), convey and assign all or part of its rights and responsibilities contained herein to a third party.

9. This covenant is binding on (name of recipient), (his/her/its) heirs, successors, and assigns in perpetuity, unless explicitly waived by the (name of SHPO parent organization). Restrictions, stipulations, and covenants contained herein shall be inserted by (name of recipient) verbatim or by express reference in any deed or other legal instrument by which (he/she/it) divests (himself/herself/itself) of either the fee simple title or any other lesser estate in (name of property) or any part thereof.

10. The failure of the (name of SHPO parent organization) to exercise any right or remedy granted under this instrument shall not have the effect of waiving or limiting the exercise of any other right or remedy or the use of such right or remedy at any other time.

11. The covenant shall be a binding servitude upon (name of historic property) and shall be deemed to run with the land. Execution of this covenant shall constitute conclusive evidence that (name of recipient) agrees to be bound by the foregoing conditions and restrictions and to perform the obligations herein set forth.

[State laws with respect to archeological sites and human remains may be more stringent than applicable Federal analogues. Accordingly, this covenant may need to be substantially revised, or, if such State laws apply to private landholders already, may not be necessary]

ATTACHMENT D—STANDARD PRESERVATION COVENANT FOR CONVEYANCE OF PROPERTY THAT INCLUDES ARCHEOLOGICAL SITES

1. In consideration of the conveyance of the real property that includes the [official number(s) designation of archeological site(s)] located in the County of [name of county], (name of State), which is more fully described as [insert legal description], [Name of property recipient] hereby covenants on behalf of [himself/herself/itself], [his/her/its] heirs, successors, and assigns at all times to the (name of SHPO parent organization), to maintain and preserve [official number(s) designation of archeological site(s)], according to the provisions of paragraphs 2 through 11 of this covenant.

2. (Name of property recipient) will notify the (name of State) Historic Preservation Officer in writing prior to undertaking any disturbance of the ground surface or any other action on [official number(s) designation of archeological site(s)] that would affect the physical integrity of this/these site(s). Such notice shall describe in reasonable detail the proposed undertaking and its expected effect on the physical integrity of [official number(s) designation of arche-

ological site(s)].

3. Within thirty (30) calendar days of the appropriate (name of State) Historic Preservation Officer's receipt of notification provided by (name of property recipient) pursuant to paragraph 2 of this covenant, the SHPO will respond to (name of property recipient) in writing as follows:

(a) That (name of property recipient) may proceed with the proposed undertaking without further consultation; or

(b) That (name of property recipient) must initiate and complete consultation with the (name of State) Historic Preservation Office before (he/she/it) can proceed with the proposed undertaking.

If the SHPO fails to respond to the (name of property recipient)'s written notice within thirty (30) calendar days of the SHPO's receipt of the same, then (name of property recipient) may proceed with the proposed undertaking without further consultation with the SHPO.

4. If the response provided to (name of property recipient) by the SHPO pursuant to paragraph 3 of this covenant requires consultation with the SHPO, then both parties will so consult in good faith to arrive at mutually-agreeable and appropriate measures that (name of property recipient) will employ to mitigate any adverse effects associated with the proposed undertaking. If the parties are unable to arrive at such mutually-agreeable mitigation measures, then (name of property recipient) shall, at a minimum, undertake recordation for the concerned property--in accordance with the Secretary of Interior's standards for recordation and any applicable State standards for recordation, or according to such other standards to which the parties may mutually agree--prior to proceeding with the proposed undertaking. Pursuant to this covenant, any mitigation measures to which (name of property recipient) and the SHPO mutually agree, or any recordation that may be required, shall be carried out solely at the expense of (name of property recipient).

5. [Name of recipient] shall make every reasonable effort to prohibit any person from vandalizing or otherwise disturbing any archeological site determined by the (name of SHPO parent organization) to be eligible for inclusion in the National Register of Historic Places. Any such vandalization or disturbance shall be reported to the (name of SHPO parent organization) promptly.

6. The (name of SHPO parent organization) shall be permitted at all reasonable time to inspect [parcel designation] to ascertain its condition and to fulfill its responsibilities hereunder.

7. In the event of a violation of this covenant, and in addition to any remedy now or hereafter provided by law, the (name of SHPO parent organization) may, following reasonable notice to [name of recipient], institute suit to enjoin said violation or to require the restoration of any archeological site affected by such violation. The successful party shall be entitled to recover all costs or expenses incurred in connection with any such suit, including all court costs and attorney's fees.

8. [Name of recipient] agrees that the (name of SHPO parent organization) may, at its discretion and without prior notice to [name of recipient], convey and assign all or part of its rights and responsibilities contained in this covenant to a third party.

9. This covenant is binding on [name of recipient], [his/her/its] heirs, successors, and assigns in perpetuity. Restrictions, stipulations, and covenants contained herein shall be inserted by [name of recipient] verbatim or by express reference in any deed or other legal instrument by which [he/she/it] divests [himself/herself/itself] of either the fee simple title or any other lesser estate in [parcel designation] or any part thereof.

10. The failure of the (name of SHPO parent organization) to exercise any right or remedy granted under this instrument shall not have the effect of waiving or limiting the exercise of any other right or remedy or the use of such right or remedy at any other time.

11. The covenant shall be a binding servitude upon the real property that includes [official number(s) designation of archeological site(s)] and shall be deemed to run with the land. Execution of this covenant shall constitute conclusive evidence that [name of recipient] agrees to be bound by the foregoing conditions and restrictions and to perform the obligations herein set forth.[3,4]

Appendix D
Army Historic Building Management Standards

D–1. General

The Army Standards have been developed for application in the maintenance, and rehabilitation of historic buildings at installations and should be applied in conjunction with, and in supplement to, the *Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* and the *Secretary of the Interior's Guidelines for the Treatment of Historic Landscapes* (Draft, 1992). In some instances the Army Standards are more specific than the Secretary of the Interior's Standards in addressing appropriate treatments for the buildings, structures, or site features. In these instances the Army Standards should take precedence.The Army Standards stress the importance of the repair, replacement, and rehabilitation of National Register eligible or listed buildings, structures, or site elements, while recognizing the need to accommodate current operation and fiscal responsibilities. In some instances, exterior and interior alterations to buildings may be needed to assure their continued use, but it is most important that such alterations do not radically change, obscure, or destroy character-defining spaces, materials, and finishes. The Army Standards identify certain character-defining attributes, and offer guidance as to their maintenance and rehabilitation. A least-cost, lifecycle economic analysis of major maintenance and rehabilitation projects should be conducted prior to initiation and include such factors as asbestos and lead paint abatement.

D–2. Site and Landscape

a. Preserve the relationship between buildings, historic military landscape elements, and open space. New construction shall be compatible with the architectural character of the Historic Property or District. Maintain grades sloping away from historic buildings.

b. Where historic landscaping has been neglected or where there is no landscaping, the installation may develop a Historic Military Landscape Plan that may be developed. Guidance for developing such historic landscape plans are included in "Guidelines for Evaluating Military Landscapes: An Integrated Approach"available in the Conservation/Cultural Resources section of the Army Environmental Center's Web site (aec-www.apgea.army.mil).

c. Retain site elements which are important in defining the overall character of the historic property. Retain and maintain structures, furnishings, and objects that remain from the period of significance.

d. Remove, and replace as required, furnishings and objects such as light fixtures, fences, benches, and trash receptacles that were placed in the landscape after the period of significance and which do not contribute to the overall character of the historic property.

e. Provide fencing enclosures that are appropriate and enhancing, (that is, cast aluminum fencing, stockade fencing, hedges, and brick

[3] These Standards can be found in Department of the Army Pamphlet 200-4: Cultural Resources Management. They are Army-wide standards for the treatment of historic buildings and structures and may be included in PAs, as needed. Installations can add to these standards or develop their own, as appropriate.

[4] If the installation has already developed design guidelines as part of the Master Planning process, these should be submitted to the consulting parties for review. If the consulting parties agree, the design guidelines should be referenced in the preface to the PA and appended to the PA. This stipulation would then be modified to simply require the installation to ensure that all new construction, rehabilitation, etc. is conducted in accordance with the design guidelines.

walls are more appropriate than chain link fencing which should be minimized and appropriately screened with planting).

f. Accommodate required parking including access for the physically disabled without intrusion to the buildings or to historically significant areas and spaces. Screen parking from public view to reduce its impact on historic properties.

g. Acquire landscape furnishings and objects, that are similar to those that existed in the landscape during the period of significance. New landscape furnishings and objects should match the original in size, materials, finishes, and placement within the site design.

h. Signage should be consistent with the character of historic properties.

D–3. Concrete/Masonry

a. Maintain concrete and masonry elements that are important in defining the overall historic character of each building or structure. Remove concrete that is inconsistent with the original concrete in color, texture and workmanship and replace with concrete to match the original. Remove masonry that is inconsistent with the original stone, brick, mortar, and stucco and replace with masonry to match the original.

b. Analyze existing concrete and mortar so that a compatible mix can be made for repairs. New concrete should match the original in color, texture and workmanship. Replacement mortar should be of the same strength and composition as the original.

c. Masonry surfaces shall be protected and maintained consistent with the original design. When repair is no longer practical, replacement of elements will be done to match the original. Repair chimneys to match original designs.

d. Repaint where spalling has occurred at lintels. Repair or replace stone steps and stoops where damaged by rusting ironwork. Remove exterior carpeting and concrete overlayments from steps and stoops. Infill with masonry to match original and remove non-original materials.

e. Retain the extant texture and color of masonry surfaces. Where masonry has been inappropriately painted return it, with proper documentation, to its original painted color.

D–4. Metals

a. Metal elements that contribute to the architectural character of a building or structure should be retained and preserved. Also, retain and preserve the size, the shape, and the type of finish, its historic color, and accent scheme.

b. Copper and bronze should not be painted or coated. Other metals should be painted to protect them from the elements.

c. Retain, rather than replace, architectural metal elements when repair of the element and limited replacement of deteriorated or missing parts can be accomplished.

d. Reinstall copper or other metal gutters and downspouts to match the original design where an inappropriate replacement material now exists. Reconfigure non-original roof leaders.

e. Clean and paint steel lintels prior to repointing. Rework iron railings with fewer penetrations into stone masonry. Remove rust; repaint and reinstall railings.

D–5. Wood

a. Interior and exterior wood elements that contribute to the historic character of the building should be retained and preserved. Original cornices and brackets, architraves, door surrounds, pediments, newels, banisters, railings, moldings, casings, mantels, paneling, cabinetwork, and other wood elements should remain as original fabric with repairs. Replace in-kind only if the original cannot be repaired. Replace functional elements that were once a part of the original fabric and are now missing.

b. Retain historic finishes and color schemes to preserve the historic character of the exterior. Repaint wood only as needed with materials and colors that are appropriate to the historic building or district.

c. Remove paint buildup from woodwork, sand, prime, and repaint; reglaze windows and doors as required. Caulk as required.

d. **Avoid vinyl, aluminum, or other artificial sidings.**

e. Repairs shall match the original woodwork in design, size and shape.

f. When necessary, replace wooden porch flooring and steps with weather-treated, painted wood.

D–6. Doors and Windows

a. Doors and windows and associated trim that contribute to the historic character of the buildings or the district shall be retained and preserved. Remove non-original doors and windows that compromise the integrity of the original and replace with units to match the original or that match adjacent structures. Retain, repair, and maintain historic hardware where it exists. Replacement hardware should match the original in size, shape, and configuration.

b. Maintain the operating condition of doors and windows. Locate weather-stripping to facilitate operation.

c. Maintain the historic appearances of windows and doors and their frames through retention of designs, materials, finishes, and colors including the configuration of sashes and muntins, depth of reveals, molding profiles, and the reflectivity and color of the glazing.

d. Combination storm and screen doors shall be simple and discreet, of one panel or with glazing or screening divisions that are aligned with the door it protects and without ornamentation.

e. The check rail of storm windows shall align with the check rail of the historic window. Glazing divisions shall coincide with the window it protects.

f. Provide protective glazing where the weather demands it. Protective glazing should be as unobtrusive as possible and should be removable without damaging historic fabric. Repair original leaded glass and replace where removed. Replacement elements shall match the original, (If using the same kind of materials is not feasible, then a compatible substitute material which conveys the visual appearance and design of the surviving parts and is physically compatible may be considered).

g. When feasible within the existing historic fabric of the house, use an interior door to create a heat-conserving vestibule. Absent this feasibility, provide storm doors.

h. Maintain appropriate existing storm windows and provide storm windows where nonexistent. Equip existing doors and windows with weather-stripping.

i. Maintain integrity of caulking and sealants at doors and windows.

D–7. Roofing

a. Retain character-defining roof shapes and roofing materials, rather than introducing incompatible materials and designs, or improper installation techniques. Retain the configuration of existing roofs without the addition of new elements that diminish the historic character.

b. Roofing material shall be appropriate to the style and period of the buildings or neighborhood. Retain original sound historic clay tile and historic slate roofing materials and architectural metal. Return nonconforming roofs to original when replacement is necessary.

c. All repairs shall match the original design and materials.

d. Retain roof ventilation to preserve elements of construction. Provide ventilation if it is nonexistent or adequate in an inconspicuous manner away from public view.

D–8. Porches/Entrances

a. Retain historic entrances and porches that are character defining elements of the building. Significant elements include doors, fanlights, sidelights, pilasters, entablatures, columns, brackets, rails, and stairs.

b. Where a porch has not been enclosed, it shall remain open. Where screening has been provided, paint the wood framing of the non-original porch screening a dark color to reduce visual impact of the framing.

c. Repair rather than replace an entire porch or entrance element when repair of the element and limited replacement of deteriorated or missing parts is appropriate.

d. When repair is no longer practical, replacement elements shall match the original. If using the same kind of material is not feasible, then a compatible substitute material which conveys the visual appearance and design of the surviving parts and is physically compatible may be considered.

e. In exception to the preceding standard, replace column bases with aluminum where deteriorated.

f. Provide barrier-free access where necessary through removable or portable, rather than permanent, ramps. Do not remove historic steps, but rather, ramp above them. Locate barrier-free access so as to minimize visual intrusion and impact on the structure.

D–9. Interiors

a. Retain and preserve interior elements and finishes that are important in defining the overall historic character of the buildings. These elements include but are not limited to columns, cornices, chair rails, baseboards, fireplaces and mantels, brick, stone, tile, light fixtures, paneling, built-in cabinetry, hardware, flooring, plaster and may include plumbing fixtures.

b. Public spaces such as reception halls, entrance spaces, entrance halls, parlors, dining rooms, and libraries are important in defining the overall historic character of the building. Size, configuration, and proportion of these spaces should be maintained. Where alterations have occurred they should be removed to restore the plan to the original design.

c. Maintain character-defining interior spaces by not cutting through floors, lowering ceilings, removing walls, or installing new partitions.

d. Reuse decorative material or elements that were removed during rehabilitation work including wall and baseboard trim, door molding, paneled doors, and wainscoting.

e. Remove excessive paint build-up from character defining elements with due regard to disposition of hazardous materials. Prime and repaint from approved palette of colors.

f. Maintain the finishes or colors of historic woodwork. For example, do not paint a previously varnished wood element, or strip historically painted wood surfaces to bare wood to create a "natural look," or remove historic plaster to expose brick.

g. New materials that obscure or damage character-defining interior elements shall not be installed. Likewise, paint, plaster, or other finishes on historically finished surfaces shall not be removed in an effort to create a new appearance.

h. Remove, clean, lacquer, and reinstall original hardware. Return original doors to designated openings.

i. Provide bathrooms with vanities, storage and modern plumbing only when necessary due to the deterioration of the original materials or fixtures. When replacement is necessary, bathroom fixtures should resemble the originals.

j. Provide kitchens with adequate cabinets, work surfaces and appliances. Provide closets and storage when necessary. Maintain consistency of design elements throughout. Historic cabinetry should be retained where feasible.

k. Encourage use of original wood floors with carpet as area rugs and stair runners.

l. Sand wooden floors only when it is absolutely necessary, rather than at the change of occupancy.

m. Promote accessibility for the disabled by providing toilet facilities on each floor level.

D–10. HVAC

a. Remove all asbestos from heating and water lines.

b. Install mechanical systems and service equipment when required, that causes minimal alteration to the building's floor plan and the principal exterior elevations, and the least damage to historic building materials and volume of principal rooms. Remove intrusive ductwork from principal rooms and provide alternate sources of supply.

c. Install mechanical systems and service equipment so that character-defining structural or interior elements are not radically changed, damaged, or destroyed.

d. Exterior walls shall not be cut for installation of HVAC units. Remove units that have been cut through exterior walls.

e. De-emphasize presence of exterior HVAC units with screening or landscaping.

f. Conceal kitchen and bath exhaust pipes from public view.

D–11. Electrical

Ensure proper service and distribution of electric current. Provide underground supply of power, phone and cable **provided that such installation does not affect archeological resources**. Rewire buildings to new service entries. Internally wire for cable and phone, removing existing conduits and wiring from exterior. Conceal all exposed conduits and ensure adequacy of outlets. Replace missing character-defining light fixtures with those appropriate to the character of the original exterior and interior. Where possible, replicate existing original fixtures or introduce fixtures appropriate to the period.

D–12. Structural

Verify structural loading of all floors to be occupied. Correct any structural deficiencies before rehabilitation or restoration.

D–13. Energy Conservation

Energy conservation will be achieved by appropriate insulation or other appropriate methods that do not radically change, damage or destroy character-defining features.

Appendix E
Prototype NAGPRA Comprehensive Agreement (CA) Regarding Inadvertent Discovery and Intentional Excavation

The following is a prototype agreement and should be used as a guideline for preparation of a NAGPRA CA regarding the inadvertent discovery or intentional excavation of human remains or cultural items, tailoring the information to the specific circumstances in each case.

Comprehensive Agreement

Regarding Inadvertent Discovery and Intentional Excavation of Native American Human Remains and Cultural Items that are Culturally Affiliated with THE TRIBE Within Lands Owned or Controlled by the U.S. Army at THE INSTALLATION

Whereas, THE INSTALLATION has a need to engage in ongoing activity that may involve the inadvertent discovery or intentional excavation of human remains or cultural items that are culturally affiliated with THE TRIBE; and

Whereas, THE INSTALLATION, in consultation with officials and traditional religious leaders of THE TRIBE, is responsible for the identification and protection of human remains and cultural items on lands under its ownership and control pursuant to the Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C. 3001) and 43 CFR Part 10; and

Whereas, human remains and cultural items that are culturally affiliated with THE TRIBE may also have historical and scientific value, and

Whereas, appropriate treatment of Native American human remains and cultural objects that are culturally affiliated with THE TRIBE requires respect for the cultural traditions of tribal members; and

Whereas, Section 11 of the Native American Graves Protection and Repatriation Act of 1990 permits and encourages specific agency-tribal agreements to ensure the appropriate treatment of Native American human remains and cultural items;

NOW, THEREFORE: The INSTALLATION and THE TRIBE agree that the following procedures will be followed for the treatment and disposition of all Native American human remains and cultural items that are culturally affiliated with THE TRIBE that are inadvertently discovered or excavated on lands owned or controlled by THE INSTALLATION.

For the purposes of this Comprehensive Agreement (CA), the following definitions shall apply:

"Human remains" means the physical remains of a human body, including but not limited to bones, teeth, hair, ashes, or mummified or otherwise preserved soft tissues of a person of Native American ancestry. The term does not include remains or portions of remains that may reasonably be determined to have been freely given by the individual from whose body they were obtained, such as hair made into ropes or nets. For the purposes of determining cultural affiliation, human remains incorporated into a cultural item, as defined below, shall be considered as part of that cultural item.

2. "Cultural items" means, collectively, human remains, associated funerary objects, unassociated funerary objects, sacred objects, and objects of cultural patrimony.

"Associated funerary objects" means:

(a) Items that, as part of the death rite or ceremony of a culture, are reasonably believed to have been placed intentionally at the time of death or later with or near individual human remains that also are currently in the possession or control of a museum or Federal agency, or

(b) Other items reasonably believed to have been made exclusively for burial purposes or to contain human remains. [Specific examples may be added]. "Unassociated funerary objects" means items that, as part of the death rite or ceremony of a culture, are reasonably believed to have been intentionally placed with or near individual human remains, either at the time of death or later, but for which the associated human remains are not in the possession or control of a museum or Federal agency. These cultural items must be identified by a preponderance of the evidence as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian Tribe or as being related to specific individuals or families or to known remains.

5. "Sacred objects" means items that are specific ceremonial objects needed by traditional

Figure E-1. Sample comprehensive agreement—Continued

Native American religious leaders for the practice of traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. While many items, from ancient pottery sheds to arrowheads, might be imbued with sacredness in the eyes of an individual, this definition is specifically limited to objects that were devoted to a traditional Native American religious ceremony or ritual and which have religious significance or function in the continued observance or renewal of such ceremony. **[Specific examples may be added].**

"Objects of cultural patrimony" means cultural items having ongoing historical, traditional, or cultural importance central to the Indian tribe itself, rather than property owned by an individual Tribal member. These objects are of such central importance that they may not be alienated, appropriated, or conveyed by any individual Tribal member. Such objects must have been considered inalienable by the culturally affiliated Indian Tribe at the time the object was separated from the group. **[Specific examples may be added].**

"Cultural affiliation" means that there is a relationship of shared group identity which can reasonably be traced historically or prehistorically between members of a present-day Indian tribe or Native Hawaiian organization and an identifiable earlier group. Cultural affiliation may be reasonably concluded when the preponderance of geographical, kinship, biological, archeological, linguistic, folklore, oral tradition, historical evidence, or other information or expert opinion supports such a conclusion.

"Intentional excavation" means the planned archeological removal of human remains or cultural items found under or on the surface of Federal or Tribal lands.

"Inadvertent discovery" means the unanticipated encounter or detection of human remains or cultural items found under or on the surface of Federal or Tribal lands pursuant to Section 3 (d) of the Act.

Article I: Notification of Inadvertent Discovery

Any employee of THE INSTALLATION who knows, or has reason to know, that human remains or cultural items have been inadvertently discovered on land owned or controlled by THE INSTALLATION shall provide immediate telephone notification of the discovery, with written backup, to THE INSTALLATION'S designated NAGPRA point of contact.

If the inadvertent discovery occurred in connection with an on-going activity, the employee of THE INSTALLATION, in addition to providing the notice described above, shall stop the activity in the area of the discovery and make a reasonable effort to protect the human remains or cultural items.

Once contacted regarding an inadvertent discovery, the designated installation NAGPRA contact will make an in situ determination, to the degree possible, of the condition, antiquity, and cultural affiliation of the human remains or cultural items based upon applicable professional standards to determine the tribe or tribes that are or are likely to be affiliated with the human remains or cultural items.

If, based on the in situ determination, the installation NAGPRA contact determines that the human remains or cultural items are culturally affiliated with THE TRIBE, he or she shall contact the appropriate tribal official within ____ working day(s) of receipt of written notification of the discovery from the person who inadvertently discovered the human remains or cultural items.

Article II: Excavation, Treatment, and Disposition of Human Remains or Cultural Items

All employees of THE INSTALLATION shall treat human remains and cultural items with respect and dignity to avoid any unnecessary disturbance, separation, or physical modification.

Whenever prudent and feasible, employees of THE INSTALLATION shall ensure that human remains or other cultural items that are culturally associated with THE TRIBE be left in situ.

In case where it is not prudent and feasible to leave the human remains or cultural items in situ, excavation and removal for human remains or other cultural items shall be undertaken by THE INSTALLATION according to the requirements of the Archeological Resources Protection Act and current professional standards for archeological data recovery (c.f. Federal Register, September 9, 1983; Archeology and Historic Preservation, Secretary of the Interiors Standards and Guidelines, vol. 48: 190, pp. 44716-44742).

Excavation of inadvertently discovered human remains or cultural items that can not be left in situ shall be undertaken by professional archeologists in the employ of THE INSTALLATION within _____ working days following the initial contact between the NAGPRA contact and the appropriate tribe official.

Non-destructive documentation of the human remains or cultural items shall be permitted. Such

Figure E-1. Sample comprehensive agreement—Continued

documentation shall be conducted by a qualified physical anthropologist or a professional archeologist. Destructive analysis of the human remains or cultural items shall not be permitted without the consent of THE TRIBE.

Prior to disposition, THE INSTALLATION shall publish general notices of the proposed disposition in a newspaper of general circulation in the area in which the human remains or cultural items were discovered and, if applicable, in a newspaper of general circulation in the area(s) in which culturally affiliated tribes now reside. The notice shall provide information as to the nature and cultural affiliation of the human remains or cultural items and shall solicit further claims on ownership. The notice shall be published at least two times a week apart, and the transfer shall not take place until at least thirty days after the publication of the second notice to allow time for any additional claimants to come forward.

If the reinternment is on land owned or controlled by THE INSTALLATION, the location of the reinternment shall only be reported to the senior land manger and to the appropriate tribal official. The specific location of the reinternment shall be withheld from disclosure and protected to the fullest extent allowed by Federal law.Within 90 days of reinternment, THE INSTALLATION shall submit a final report documenting the discovery, treatment, and disposition of the human remains or cultural items to the appropriate tribal official.

Article III: Term of Agreement

From the date of the last signature, this CA shall remain in effect for a term of 5 years and may be amended only with the written consent of all parties hereto at the time of such amendment.

Any signatory party may terminate their participation in the CA upon 30 days written notice to the other signatories.

Anti-Deficiency Act statement

Signature

This agreement shall become binding upon its execution by the authorized representative of each party. Each party warrants that it has the requisite authority to execute, deliver, and consummate the transactions contemplated by this agreement.

THE TRIBE		THE AGENCY	
Authorized Official	Date	Authorized Official	Date
(Head of Tribal Government)		(Installation Commander)	

Figure E-1. Sample comprehensive agreement

Appendix F
Guidelines for Army Consultation with Native Americans

Executive Summary

The primary purpose of this document is to provide guidance to US. Army installation commanders and other Army personnel at the installation for consultation with Native Americans, Alaskan Natives, and Native Hawaiians. Consultation proceedings should be designed to ensure the participation of Native American, Alaskan Native, and Native Hawaiian representatives early in the planning process for U.S. Army activities. In addition, all consultation should be developed in a manner that is consistent with Federal laws and regulations that mandate such consultation.

The Federal statutes included by reference in these guidelines are the National Historic Preservation Act (NHPA); the Native American Graves Protection and Repatriation Act (NAGPRA); the National Environmental Policy Act (NEPA); the Archeological Resources Protection Act (ARPA); and the American Indian Religious Freedom Act (AIRFA). Cultural resources are defined by the Army as follows: historic properties as defined by the NHPA, cultural items as defined by NAGPRA, archeological resources as defined by ARPA, Sacred sites as defined in EO 13007 to which access is afforded under AIRFA, and collections as defined in 36 CFR 79.

Legislative acts alone cannot resolve the numerous and diverse concerns of Native groups with respect to their cultural heritage. Consultation provides Native Americans, Alaskan Natives, and Native Hawaiians with the opportunity to voice their concerns through their consultation representatives. The end goal of consultation is the resolution of issues in terms that are mutually acceptable to the U.S. Army and to the participating Native American, Alaskan Na-

tives, and Native Hawaiian groups.

These guidelines are not meant to present specific consultation procedures for every issue that may require consultation. They are intended to provide basic guidance to installation personnel in the form of discussions of some of the major issues that may arise in consultation; the major statutory requirements regarding consultation; tools that can be used to develop effective consultation procedures; and suggestions for integrating the consultation process into existing Army planning and operating procedures.

Section I presents background information on the fundamental relationship between the U.S. Government and federally recognized Indian tribes, including Alaska Native villages, and Native Hawaiian organizations. It includes discussions of the trust relationship, the Federal policy of government-to-government relations, Federal recognition status, and tribal government structure. It is important for the installation commander and other Army personnel who will be involved in consultation to understand these issues before entering into consultation with Native Americans, Alaskan Natives, and Native Hawaiians.

Section II presents a discussion of some major issues of concern to Native Americans, Alaskan Natives, and Native Hawaiians. These issues include public disclosure and confidentiality; NAGPRA/reburial issues; ceremonies/access to religious and sacred sites; the scientific study and photography of human remains; tribal regulations, ordinances, resolutions, and protocols; and timing issues regarding the consultation schedule.

Section III presents brief discussions of the consultation requirements of various Federal statutes. These statutes include the NHPA, NAGPRA, NEPA, ARPA, and AIRFA. Flowcharts outlining the consultation process are also presented.

Section IV contains a general discussion of the consultation process and presents this discussion in the form of consultation guidelines. Using this information as a guide, the installation commander should develop procedures for consultation that take into consideration issues specific to the installation and to the Native Americans, Alaskan Natives, and Native Hawaiians with whom consultation will occur. Regardless of the specific legal mandate that prompts consultation, the general form of consultation should include the following components: identification of the appropriate consulting parties; procedures for notifying the consulting parties; the consultation schedule, process, and content; resolution of the consultation issues; dispute resolution; and final actions. This section concludes with a discussion of general consultation agreements that can be created and used in consultation between the installation commander and Native Americans, Alaskan Natives, and Native Hawaiians.

Section V presents a discussion of the Army consultation structure, as it may be developed to coordinate and streamline consultation proceedings. This section includes discussions of the benefits of establishing an ongoing consultation relationship in advance of a specific need for consultation, the appointment by the installation commander of a Native American Coordinator for the installation, and existing Army planning and procedural documents that may provide an effective avenue for coordinating consultation procedures at the installation level.

Section VI presents a discussion of Traditional Cultural Properties and Sacred Sites. Discussion goes into definitions, legal mandates, steps for consultations on TCPs and sacred sites, and confidentiality issues.

Section VII presents information on consultation fees and guidance as to when the commander should financially assist parties in the consultation process.

Section VIII presents a historical overview of Federal Indian policies and includes a bibliography for further reading.

Section I
Background Information

Effective consultation with Native Americans, Alaskan Natives, and Native Hawaiians requires an understanding of the fundamental relationship between the U.S. Federal Government and federally recognized Indian tribes, including Alaska Native villages and Native Hawaiian organizations. This relationship can be divided into four broad categories: the trust relationship, the Federal policy of government-to-government relations, Federal recognition status, and tribal governmental structure. Each of these aspects is discussed below.

I–1. Trust Relations

The United States and federally recognized Indian tribes, including Alaska Native villages, exist in guardian-ward relations. This relationship reflects the status of each tribe as a "domestic dependent nation." Because of this status, the Federal government is considered to have a duty to protect tribal interests. This duty is referred to as the "trust responsibility." The trust responsibility is one of a general obligation to protect tribal self-government, in addition to providing services. The trust relationship is perhaps the most important concept related to Indian law. The trust doctrine is defined cumulatively through treaties, executive agreements, legislation, and court decisions.

The trust responsibility can be divided into three broad areas: (1) protection of trust property; (2) protection of self-government; and (3) provision of services. For the installation commander, the most relevant area of trust responsibility is the protection of Indian trust property. The protection of Indian trust property includes the protection and management of Indian lands and natural resources. The protection of Indian self-government is also relevant, as consultation with Indian tribes, including Alaska Native villages, should afford tribal representatives sufficient opportunity to participate in the decision-making process regarding Indian trust property. The installation commander also should become familiar with the terms of treaties between the U.S. Government and Indian tribes that are relevant to that installation.

I–2. Government-to-Government Relations

The White House Memorandum on Government-to-Government Relations with Native American Tribal Governments (29 April 1994) directs Federal departments and agencies to approach consultation with federally-recognized tribal governments on a government-to-government basis. This memorandum formalizes an official Federal policy affecting consultation in recognition of the need for Federal agencies to communicate and coordinate activities with tribal organizations through their governmental structure. Consultation with tribal leaders in a government-to-government relationship means that tribal leaders should be afforded the same respect as any head of state. Whereas, IAW AR 200-4, formal government to government relations involve direct communication between the installation commander and the head of the tribal government, most consultation meetings likely will involve other Army personnel and other members or designee of the tribe.

I–3. Recognition Status

The U.S. Army should adhere to federally legislated definitions to comply fully with the law. Thus, federally recognized Indian tribes, including Alaska Native villages, and Native Hawaiian organizations provide the framework for identifying consultation parties under the referenced statutes and regulations.

a. Bureau of Indian Affairs The Bureau of Indian Affairs (BIA), through Congressional order, serves a major role in overseeing the U.S. government's trust responsibilities, including the acknowledgment, or recognition, of Indian tribes as sovereign entities. Federal recognition of Indian tribes may be based on treaties, Executive Orders or Presidential Proclamations, or congressional action. In

addition, regulations for Federal acknowledgment of Indian tribes (83 CFR 25) have seven specific criteria for acknowledgment. The Branch of Acknowledgment and Research, part of the BIA's Division of Tribal Government Services, acts on petitions by Indian groups for Federal recognition, among other duties, to determine if all of the respective criteria are met.

The BIA publishes in the Federal Register a list, updated annually, of tribal leaders of federally recognized Indian tribes, including Alaska Native villages. The BIA also maintains a list, updated annually, of tribes petitioning for Federal recognition; although this list is not published, it is available directly from the BIA Branch of Acknowledgment and Research. In addition, the Departmental Consulting Archeologist (National Park Service) acting for the Secretary of the Interior also maintains and periodically updates a list of federally recognized Indian tribes.

In addition to their headquarters in Washington, DC., the BIA has a series of regional area offices and local agency offices around the country. These offices can help coordinate consultation with Indian tribes in their jurisdiction, including Alaska Native villages. These BIA offices are likely to be familiar with the different government structures, tenure of tribal leaders, etc. of the Indian tribes, including Alaska Native villages, in their jurisdiction.

b. Federally Recognized Indian Groups The Department of the Army Regulation 200-4 (Cultural Resources Management) provides definitions for Indian tribes that derive from those presented in Federal legislation. According to this policy, "Indian tribe" is defined as

> *any tribe, band, nation or other organized group or community of Indians which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.*

This definition includes Alaska Native villages (see below).

c. Non-federally Recognized Indian Groups Non-federally recognized Indian groups are those that have never been federally recognized or those that have had their Federal recognition status terminated by an Act of Congress. Such groups vary widely in their composition and political structure, ranging from only a few members to large populations with governmental structures similar to federally recognized tribes. Some groups may have a petition for Federal recognition under review by the BIA.

Many states also have programs for recognizing Indian tribes that may be similar to the Federal program. In fact, some Indian tribes may have obtained both Federal and State recognition. State recognition has no effect on an Indian group's Federal recognition status and generates no requirement to treat such groups as federally recognized tribes.

d. Alaska Native Villages, and Regional and Village Corporations Alaska Native Villages represent the Alaskan Native counterpart to federally recognized Indian tribes. In addition, Alaska Native regional corporations and village corporations were established under the terms of the Alaska Native Claims Settlement Act (ANCSA) of 1971. The resulting political structures of Indian tribes and Alaska Native regional and village corporations differ substantially. Despite the differences in political structure, Alaska Native villages are afforded the same status as federally recognized Indian tribes. Alaska Native regional and village corporations represent for-profit entities.

e. Native Hawaiian Organizations NAGPRA provides a definition of "Native Hawaiian organization." According to that statute, a "Native Hawaiian organization" refers to any organization

> *which serves and represents the interests of Native Hawaiians, has as a primary and stated purpose the provision of services to Native Hawaiians, and has expertise in Native Hawaiian affairs.*

Two organizations that meet these criteria are named specifically in the NAGPRA Final Regulations (43 CFR Part 10): the *Hui Malama I Na Kupuna 'O Hawai'i Nei* and the Office of Hawaiian Affairs. The Final Regulations (43 CFR Part 10) for NAGPRA outline a process for identifying other Native Hawaiian organizations that meet these same criteria. Other Native Hawaiian organizations should provide Army installations with verification that they represent the interests of, and provide services and expertise to local or regional Native Hawaiian communities. These organizations should also show that they have Native Hawaiians as members of their organization and should present consensus or approval statements from local or regional Native Hawaiian communities that such organization serves and represents specific Native Hawaiian community interests.

The term "Native Hawaiian" generally means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii. However, this definition does not have local consensus and the term "Native Hawaiian" is not well defined by Federal statute.

I–4. Tribal Government Structure

Tribal governments were recognized by the European colonial governments as sovereign entities, and the U.S. Constitution (Article I, Section 8) granted Congress the power to regulate commerce with Indian tribes along with all other sovereign nations. Thus, there is legislative precedent for recognizing Indian tribes as distinct political entities. Treaties that were negotiated between Indian tribes and the colonial governments and, later, the U.S. Government, *reserved* rights for the tribes rather than *conferred* rights to them. For example, Indian reservations were not lands that were granted by the U.S. Government to Indian tribes, but instead were lands traditionally inhabited by Indians that were reserved for their use by treaties.

The evolution of Federal Indian policies from the American Revolution to the present drastically altered many aspects of Indian culture, including their governmental structure. Thus, the structure of present-day tribal governments may differ substantially from their historical (and aboriginal) antecedents. Furthermore, the governmental structures of Indian tribes in the continental U.S. differ substantially from those of Native Alaskan and Native Hawaiian groups, given the geographic and cultural differences between these groups and the U.S. Government's response to them.

a. Indian Tribes in the Continental United States The tribal organizations of many federally recognized Indian tribes were defined by the Indian Reorganization Act (IRA) of 1934. However, some tribes, such as the Cherokees, Choctaws, Creeks, and Chickasaws, had established tribal organizations long before the IRA became law. Other tribes, such as the Iroquois and the Pueblos, never developed a written constitutional form of government, preferring instead to retain their respective traditional forms of government even after the passage of the IRA. Thus, modern tribal councils vary considerably in both their structure and the chain of authority within their respective tribes.

For example, the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) have a nine-member elected tribal council termed the Board of Trustees. From this group, a chairman, vice-chairman, secretary, and treasure are selected. Tribal business is usually conducted by various committees. As another example, the tribal government of the Kaw Nation of Oklahoma consists of three parts. The General Council includes all tribal members and has ultimate authority for tribal decisions. The Executive Council is composed of seven members elected by the General Council, including the Council Chairperson, Vice Chairperson, and Secretary. The third part consists solely of the Chairperson/Corporate Executive Officer. Within this administrative structure, the Kaw Nation of Oklahoma has a Historic Preservation Department, the manager of which

reports directly to the General Council Chairperson.

As another example, the Navajo Nation has legislative, judicial, and executive branches. The legislative branch consists of 88 elected council members representing 110 chapter districts. The elected members serve four-year terms. Additionally, the legislative branch includes a Speaker of the Council and the Navajo Nation Council. The judicial branch consists of the Supreme Court and seven judicial districts. The executive branch consists of the President and Vice-President, each of whom are elected to 4-year terms and who oversee 13 divisions/offices. The Navajo Nation Historic Preservation Department is under the Division of Natural Resources in the Executive Branch.

In addition to individual tribal councils, intertribal organizations have been formed in some regions. For example, the United South and Eastern Tribes (USET) is a non-profit entity that was formed to provide a forum for the exchange of ideas among its 21 member tribes. While such intertribal organizations are important, the government to government relationship only exists between the installation and individual federally recognized Indian tribes.

Some federally recognized Indian tribes have trust lands, or reservations, associated with them. Although many Indian reservations derive from areas that were inhabited by tribes during aboriginal and historical times, some reservations were established by Federal legislation and executive order during the nineteenth century as part of the Federal Indian removal policy. The result was that many tribes were relocated far from their aboriginal and historical homelands to these newly established Federal Indian reservations. Over the course of the nineteenth century, portions of the large reservations were opened for non-Indian settlement, further restricting the land area inhabited by Native Americans. During the early twentieth century, Federal policy was revised to encourage private, rather than tribal, ownership of land by providing incentives for Native Americans to move from the reservation to private plots.

Today, Indian reservations provide a physical manifestation of the "nation within a nation" aspect of many tribal governments. It is important to note, however, that most Indian tribes with trust lands also have tribal members who do not reside on the reservations. Furthermore, many tribes do not have trust or reservation lands. Nonetheless, the lack of trust lands does not alter the special status of federally recognized Indian tribes with respect to Federal policies and legislation; on the contrary, additional protections, and additional tribal oversight, are provided for Indian lands in Federal legislation.

b. Alaska Native Villages, and Regional and Village Corporations In Alaska, the governmental structure of Alaskan Natives is rather complex and consists of three entities: Alaska Native villages represent the federally recognized entities, while Alaska Native regional and village corporations are for-profit corporations. Alaska Native regional and village corporations in part grew out of grassroots organizations that were formed to lobby for land claims. These corporations formally were created by the Alaska Native Claims and Settlement Act (ANCSA) of 1971. The modern political structure of the Alaska Native villages may include both traditional and modern political organizations.

The nature of Alaska Native lands is distinctly different from that of Native American lands in the continental U.S. Modern Alaska Native villages were defined by the terms of ANCSA in 1971 and reflect the Federal government's primary interest in the mineral resources of Alaska rather than land for settlement. Although many of the Alaska Native villages derive from traditional villages, others are fairly recent creations. In addition, some villages also are occupied only seasonally and their inhabitants may reside in non-Alaska Native villages for much of the year. The two-tiered governmental structure (regional and village corporations) also divides responsibility for and authority over Alaska Native lands.

In general, the Federal "government-to-government relations" policy with respect to federally recognized Indian tribes should be carried out between the installation commander and respective Alaska Native tribal, or village, leaders. However, most Alaska Native lands actually are owned by the regional and village corporations rather than the tribe. Thus, consultation with representatives of these governmental entities may be required as well. Furthermore, regional corporations generally control subsurface rights to the land while surface rights are held by the village corporations. Thus, in effect, three separate Alaska Native governmental entities may be required for consultation.

Most of the villages in the Bristol Bay Region, for example, have tribal councils, the traditional form of government, in addition to city governments that were created under State law. Additional government entities include two borough governments-the Bristol Bay Borough and the Lake and Peninsula Borough-and a regional government, the Bristol Bay Native Corporation. The Bristol Bay Native Corporation is one of 13 regional governments established under the terms of ANCSA. In the Bristol Bay region of Alaska, the largest private landowners are the Alaska Native corporations, and much of the non-corporation land in the area is federally or State-owned. Subsurface land rights are held by the regional corporation (the Bristol Bay Native Corporation), and surface rights are controlled by the village corporations.

c. Native Hawaiian Organizations In Hawaii, the situation is different from both the continental U.S. and Alaska. Native Hawaiians lack the Federal recognition status of Indian tribes and Alaska Native villages. Instead, Federal legislation recognizes State and independent organizations in Hawaii whom, in effect, serve as the counterpart of federally recognized Indian tribal councils and Alaska Native villages.

The Office of Hawaiian Affairs (OHA) developed from State efforts to provide a wide range of services to Native Hawaiians, including protecting and preserving their cultural heritage. The OHA, created in 1978, combines government, non-profit, and private agency responsibilities into one organization. The OHA is specifically recognized by the Federal government as representing the interests of Native Hawaiians in compliance with Federal cultural resource legislation. Another organization specifically recognized by the Federal government is the *Hui Malama I Na Kupuna 'O Hawai'i Nei*. In addition to the Native Hawaiian organizations, individual island burial councils have been established as advisory organizations.
For the purposes of consultation with Native Hawaiian organizations, relevant lands fall into two categories. Hawaiian "home lands" are lands set aside under the terms of the Hawaiian Homes Commission Act of 1920 and are administered by the Department of Hawaiian Home Lands. "Ceded lands" are former crown and government lands of the Kingdom of Hawai'i that were ceded to the U.S. Government when Hawaii became a territory of the United States. Most, but not all, of these lands were returned to the State of Hawaii in 1959, with specific purposes enumerated for them, one being the betterment of the conditions of Native Hawaiians. Both the Federal Government and the State of Hawaii retain title to these "ceded" lands, a portion of which is used for military purposes. A portion of the revenue from these lands funds the OHA. Ceded lands are currently administered by the Hawaii Department of Land and Natural Resources.

Section II
Major Issues of Concern to Native Americans, Alaskan Natives, and Native Hawaiians

The information in this section is intended to illustrate some of the major issues of concern to Native Americans, Alaskan Natives, and Native Hawaiians. An understanding of these issues should help

Army representatives develop the consultation process so that consultation becomes a meaningful and effective process that allows for open communication and long-term, credible consultation relationships.

II–1. Public Disclosure and Confidentiality

Issue: The protection of culturally sensitive information, such as archeological site locations, locations of sacred sites, and religious or other cultural practices.

Representatives of Indian tribes, including Alaska Native villages, and Native Hawaiian organizations may be reluctant, unwilling, or even unable to provide information on sacred site locations or specific aspects of religious ceremonies or cultural traditions. This can be true with or without Army safeguards in place to ensure the information will be kept confidential. This issue of confidentiality may be particularly frustrating when the Army's desire for documentation brings Native American concerns for cultural privacy into conflict with Federal requirements for public disclosure. In particular, the requirements of the Freedom of Information Act (FOIA) may require that the Army make available consultation documents upon request.

The FOIA was passed to ensure the public's access to information produced and maintained by Federal agencies in the performance of their required duties. With the exception of certain types of information that are specifically exempted, public records are subject to disclosure to the public upon any request which properly identifies the records in question. The courts have defined "public records" to include information created or maintained by an agency and which is within the agency's possession. An agency cannot be required to create a record in response to a request under FOIA, but it can be required to produce an index of the records that might satisfy the specifications of the request.

The FOIA contains a specific exemption that precludes disclosure where another statute directs that a specific type of information be withheld. Of the statutes requiring consultation with Native Americans, only the National Historic Preservation Act (NHPA) and the Archaeological Resources Protection Act (ARPA) have express provisions for protecting information from disclosure. In fact, ARPA specifically refers to FOIA. Both of these laws refer primarily to information regarding the location and content of sites and historic properties. The non-disclosure provision of the NHPA covers information identifying traditional cultural properties. There appears to be no provision, however, for protecting information compiled under NAGPRA, and the decision reached in a recent court case supports the notion that NAGPRA documentation is subject to disclosure upon request. Further, EO 13007 states that "where appropriate," Federal agencies shall maintain the confidentiality of sacred sites as defined in that EO.

Disclosure issues should be addressed at the beginning of the consultation process. If tribal representatives are concerned about disclosure issues, a possible solution to the problem would be to document the consultation *process* rather than its *substance*. The installation commander may document the times and locations of consultation meetings, names and addresses of participating representatives, and a list of issues discussed, while limiting documentation of specific and detailed information such as site location or aspects of cultural traditions. Once information is on record, it could be subject to a request under FOIA, so the limits to be placed on documentation should be discussed early and openly in the consultation process. The installation commander should discuss these issues with tribal representatives and with the Staff Judge Advocate to develop a means of protecting information that must be kept in confidence. During consultation, the installation commander or consultation representative should not request more information than is needed to discuss and resolve consultation issues.

II–2. NAGPRA/Reburial Issues

Issue: Repatriation and reburial of human remains in a culturally sensitive manner.

Consultation is required under NAGPRA to determine the cultural affiliation of human remains and certain cultural items in existing collections that are in the possession or control of Federal agencies (see Section III-2). Consultation is also required for intentional excavations and inadvertent discoveries of human remains and certain cultural items on Federal or tribal lands. In addition, consultation must be conducted to facilitate repatriation of human remains and NAGPRA-related cultural items. However, concerns regarding NAGPRA issues extend beyond simple identification, custody, and repatriation of human remains and cultural items.

The manner in which human remains and cultural items are curated and transported for repatriation purposes also are important issues that may require consultation with Native Americans, Alaskan Natives, and Native Hawaiians. Native groups and lineal descendants may oppose the display of human remains and cultural items and the publication of information on them through photographs, informational brochures, or scientific studies. Such concerns may also extend to documentation associated with the human remains and cultural items, as well as excavation records, site maps, and reports.

Consultation is particularly important in repatriation cases to ensure proper respect of cultural traditions and sensitivities. It is important to note that some Native American tribes did not practice reburial of human remains, which has caused a dilemma concerning how to repatriate human remains. However, some Indian tribes have developed policy and procedures for handling repatriation and reburial. Information on these policies and procedures should be requested by the installation commander before the need for consultation arises.

Reburial of human remains and other cultural items is however, often the form of treatment of repatriated items preferred by Indian tribes and Native Hawaiian organizations, and often reburial is preferred to occur at or near the location (that is, usually the archeological site) where the remains were originally excavated. Clearly this is an issue for the installation commander's decision. Allowing reburial of cultural items repatriated under NAGPRA on the installation would generate a requirement to protect the reburial area from damage in perpetuity. Reburial is not specifically required under NAGPRA, however it is a means of treatment for repatriated remains that many tribes prefer and the installation commander may be faced with such requests upon repatriation.

II–3. Ceremonies/Access to Religious and Sacred Sites

Issue: Maintaining reasonable access to religious and sacred sites and sites and resources necessary for other cultural ceremonies.

Native American concerns regarding religious practices are addressed under the American Indian Religious Freedom Act (AIRFA) and Executive Order 13007, which ensures reasonable access by Native peoples to sacred objects and sites and natural resources that play important roles in religious and other cultural ceremonies. Of special note is the recent Executive Order 13007 "Indian Sacred Sites". In some cases, specific sites or landforms may serve as integral components of Native American religious practices and may require compliance with the NHPA as "traditional cultural properties." Certain natural resources, such as particular plant species, may be necessary to fulfill religious or other ceremonial needs. Thus, Indian tribal concerns not only involve the protection of such sites, objects, and resources, but also include retaining reasonable access to them. Even seasonal access restrictions to sites and resources may inhibit the practice of ceremonies that traditionally are held only at specific times of the year. It is noted that AIRFA applies to "American Indian, Eskimo, Aleut, and Native Hawaiian's" (terms

which are not defined in the statute), while EO 13007 applies only to federally recognized Indian tribes.

II–4. Scientific Study and Photography of Human Remains

Issue: Treatment of human remains in a culturally sensitive manner by limiting the study or display of human remains.

Many Native Americans, Alaskan Natives, and Native Hawaiians consider the scientific study of human remains, including photographic documentation, to be disrespectful and culturally insensitive. NAGPRA limits the initiation of new scientific research or other means of acquiring or preserving additional scientific data on human remains. The regulations only allow for more extensive study in those circumstances where human remains and certain cultural items are indispensable to the completion of a specific scientific study, the outcome of which is of major benefit to the United States (43 CFR 10.10(c). It is recommended that more extensive studies be conducted in consultation with the affiliated tribe or lineal descendant.

II–5. Tribal Regulations, Ordinances, Resolutions, and Protocols

Issue: Numerous tribes have internal tribal regulations and other compliance policies that should be reviewed by the installation and followed where appropriate in consultation proceedings.

Many Indian tribes, Alaska Native villages, and Native Hawaiian organizations have developed regulations, ordinances, resolutions, and protocols for handling issues covered under specific Federal cultural resource legislation. Such regulations and procedures may describe the relative authority of various tribal representatives, departments, or committees, as well as a process for consultation and preferred methods of resolving issues.

The installation commander should request such information when first establishing a consultation relationship. Existing tribal procedures will help ensure that the appropriate representatives—those who have the authority to negotiate and enter into consultation agreements on behalf of their constituencies—are invited to consult. Such procedures also may include specified time frames for the review of documentation that take into account regularly scheduled tribal council meetings. Because consultation between the Army and Indian tribes, including Alaska Native villages, should be conducted on a government-to-government basis, it is imperative to be knowledgeable of tribal regulations, ordinances, resolutions, and protocols. Additionally, certain tribes have been delegated SHPO responsibilities for tribal land by the National Park Service IAW NHPA Section 101. Such designation would impact installation's compliance procedures if Army actions are proposed for tribal lands of such designated Indian tribes.

II–6. Timing Issues

Issue: Developing a consultation schedule that affords tribal representative sufficient opportunity to consult.

Planning and procedural issues may allow for consultation to occur over a period of months or even years. NAGPRA consultation for inadvertent discoveries made during an ongoing construction project, on the other hand, may require a much shorter time frame, perhaps a matter of days or weeks. The schedule for consultation should be developed mutually by Army and tribal representatives taking into consideration a variety of matters: (1) the complexity of the consultation issues; (2) Army and tribal schedule and fiscal constraints; (3) Army and tribal standard operating procedures and protocols; and (4) statutory requirements. Tribal representatives should be afforded time to adequately review the appropriate information and documentation and to allow their constituencies to reach consensus. These considerations also should extend to the distance and costs of travel that will be required by tribal representatives to attend consultation meetings and to make site visits. The consultation schedule that is developed must also fit into the overall project timetable, including fiscal, mission, and other legal constraints. Timing issues under NAGPRA can be addressed in NAGPRA CAs.

Gaining familiarity with tribal procedures and protocols may help avoid time conflicts in consultation proceedings. Tribal documents may give information on the regularity and timing of council meetings at which tribal representatives would normally solicit comment on consultation issues. Tribal council meetings may provide the only or best opportunity for tribal representatives to gain tribal approval of consultation agreements. Developing an ongoing consultation relationship prior to a specific need for consultation also would help alleviate scheduling conflicts by addressing timing issues in advance.

Section III
Legal Mandates

A number of Federal laws and regulations affect Native American, Alaskan Native, and Native Hawaiian cultural resources and religious freedom. These laws include general Federal environmental and cultural resources protection and preservation laws (NHPA, NEPA, and ARPA) and other Federal laws that deal specifically with Native American, Alaskan Native, and Native Hawaiian human remains, cultural resources, and religious freedom (NAGPRA and AIRFA). These statutes differ in terms of the extent of consultation required and with whom consultation is either required or encouraged (see table 1). It is recommended that consultation procedures with Indian tribes and Native Hawaiian organizations be developed and integrated in the installation ICRMP.

Table F–1
Consultation Requirements by Statute.

NHPA	NAGPRA	NEPA	ARPA	AIRFA	EO 13007
Federally recognized Indian tribes					
yes	yes	yes	yes	no	yes
Native Hawaiian organizations					
yes	yes	yes	no	no	no
Non-Federally recognized Indian tribes					
yes	no	yes	no	no	no

Notes:
Federally recognized Indian tribes include Alaska Native villages
Yes = consultation is required.
No = consultation is not required, but it is recommended.

Consultation requirements for each of these laws are summarized briefly below. Flowcharts outlining the basic consultation process for each statute are presented in figures 1-4. The installation commander and designated consultation representative(s) should become familiar with the specific consultation requirements for each of these laws as well as the overall process of consultation presented in Section IV.

III–1. National Historic Preservation Act (NHPA)

The NHPA established a Federal program for the preservation of historic properties, including archeological sites, throughout the nation. The Act established a Federal listing of historically significant properties and sites kept by the Secretary of the Interior and known as the National Register of Historic Places. The law also established historic preservation programs for Indian lands and preservation procedures for sites of significance to Native Americans, Alaskan Natives, and Native Hawaiians on other Federal lands.

Consultation with Indian tribes, including Alaska Native villages, and Native Hawaiian organizations is required when an undertaking affects Indian lands. Tribal representatives also may be invited to consult when an undertaking will affect non-Indian lands (see fig F-

1). When an undertaking on non-Indian lands, as defined in NHPA Section 301(7) is found to affect properties having historic value to an Indian tribe, the Army shall afford such tribes the opportunity to participate as interested persons [36 CFR 800.1(c)(2)(iii)].

Indian tribes must be invited to participate as consulting parties when an undertaking will affect lands under the jurisdiction or control of an Indian tribe. As directed by NHPA Section 101(d)(6)(b), the Army, in carrying out it's Section 106 responsibilities, shall consult with Indian tribes and Native Hawaiian organizations that attach importance to traditional religious or cultural properties that are eligible for listing in the National Register of Historic Places (that is, "traditional cultural properties," see National Register Bulletin 88). NHPA Section 101 also provides federally recognized Indian tribes, who have had their historic preservation programs approved by the National Park Service, with the authority to assume SHPO NHPA Section 106 functions for Army undertakings that may occur on tribal lands. In such situations, the Army must consult with the Tribal Historic Preservation Officer (THPO) in lieu of the SHPO.

Consultation with Indian tribes, including Alaska Native villages, is required when historic properties of traditional religious or cultural importance to those groups may be affected by a specific proposed Federal undertaking (Section 106), whether or not on Federal or tribal lands, and by any Federal preservation-related activity (Section 110). Consultation under NHPA is not restricted to federally recognized Indian tribes, including Alaska Native villages, and Native Hawaiian organizations. Indian groups that are not federally recognized may participate in Section 106 consultation as a member of the interested public.

III–2. Native American Graves Protection and Repatriation Act (NAGPRA)

NAGPRA was enacted in part to afford lineal descendants and Indian tribes and Native Hawaiian organizations with standing under the statute rights of custody to their human remains and cultural items discovered on Federal or tribal lands or in the possession of Federal agencies and museums receiving Federal funding. The law also deals with existing archaeological collections, intentional excavations, inadvertent discoveries, and illegal trafficking of human remains and certain cultural items.

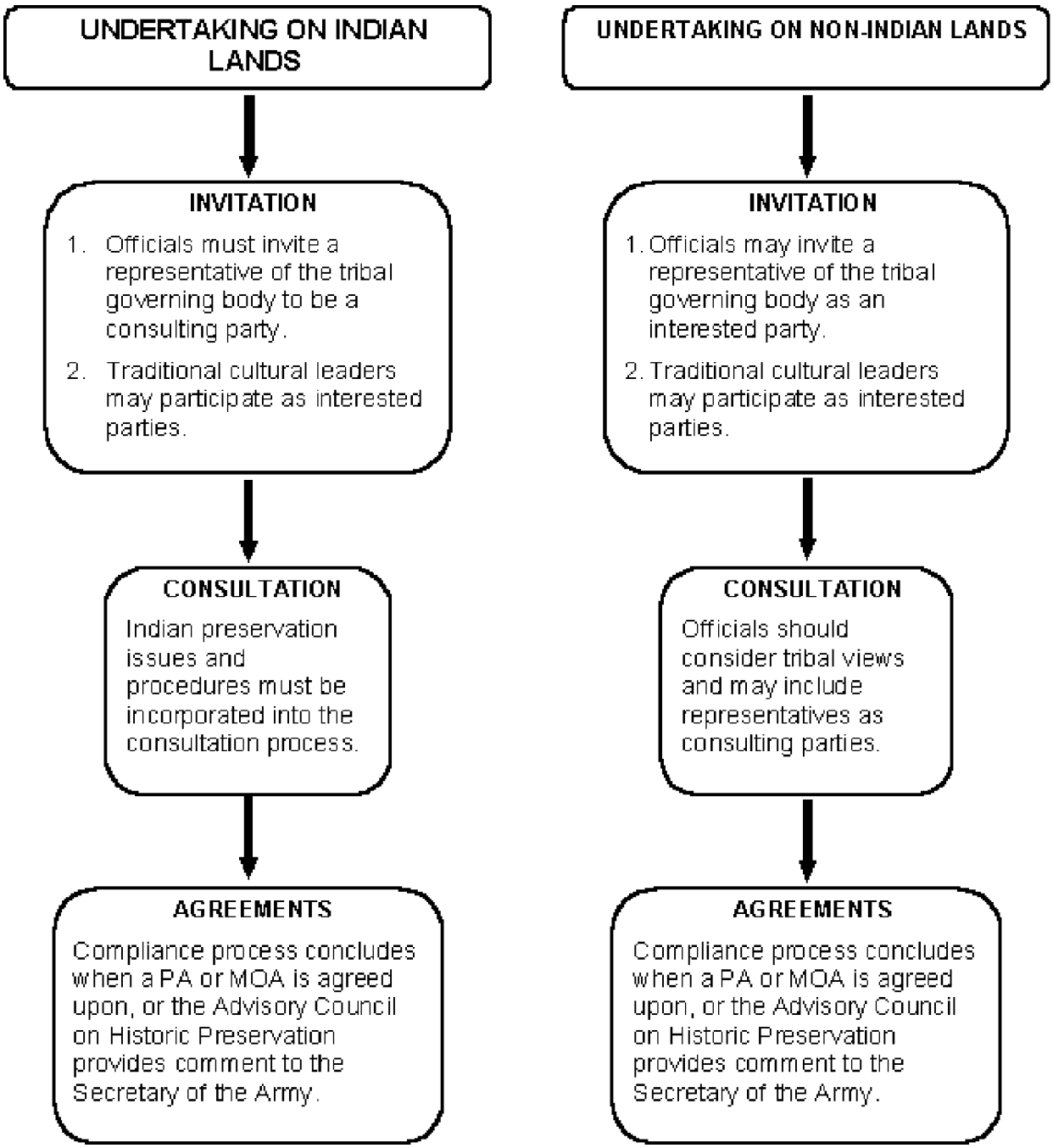

Figure F-1. National Historic Preservation Act Section 106 Compliance (16 USC 470(f)) Consultation

a. Existing Collections. NAGPRA requires Federal agencies and museums receiving Federal funds of any type to identify the cultural affiliation of human remains and certain cultural items in their possession or control and to notify the Indian tribes, including Alaska Native villages, and Native Hawaiian organizations, and or closest lineal descendants who are likely to be culturally affiliated with the human remains and cultural items. Further, it calls for these remains and cultural items to be made available for return to the respective Native groups or closest lineal descendants, if they so request, after a repatriation notice is published in the Federal Register. Final rules and regulations for NAGPRA were promulgated in 1995 [NAGPRA Regulations 1995 (43 CFR Part 10)].

The summary, inventory, and repatriation of human remains and cultural items defined in NAGPRA shall occur according to NAGPRA 43 CFR Part 10.5-10.7. The cultural items to be repatriated according to 43 CFR Part 10.7 shall come from existing collections and property clearly in the possession or control of the Department of the Army. The U.S. Army Environmental Center implemented an Army-wide program to assist installation compliance with Sections 5 and 6 of NAGPRA. Under this program, installations were provided all reports, documentation and guidance for repatriation of any cultural items, installations are responsible for consultation and repatriation.

Repatriation under NAGPRA only occurs to federally recognized

Indian tribes, Native Hawaiian organizations, or lineal descendants as defined in NAGPRA. Competing claims for repatriation of cultural items shall be handled according to 43 CFR Part 10.7(3). Consultation should be designed primarily to identify human remains and certain cultural items that should be made available for repatriation to individuals or groups with standing under the Act and to identify cultural affiliation with those human remains and cultural items (43 CFR Part 10.1(1)(I)).

b. Intentional Excavations and Inadvertent Discoveries Consultation is required under NAGPRA to determine cultural affiliation of human remains and specific cultural items that derive from intentional excavations and inadvertent discoveries on Federal or tribal lands. In addition, consultation is required to determine custody (or disposition) of human remains and certain cultural items recovered from Federal or tribal lands. Provisions for intentional excavations and inadvertent discoveries apply to activities that occur or occurred after November 16, 1990 [43 CFR Part 10.3(a) and 10.4(a)]. In cases of intentional excavation or inadvertent discovery of human remains and cultural items on Federal lands, the procedures set out in 43 CFR Part 10.3(c-d) shall be followed. A Comprehensive Agreement (CA) may be prepared which could streamline this process.

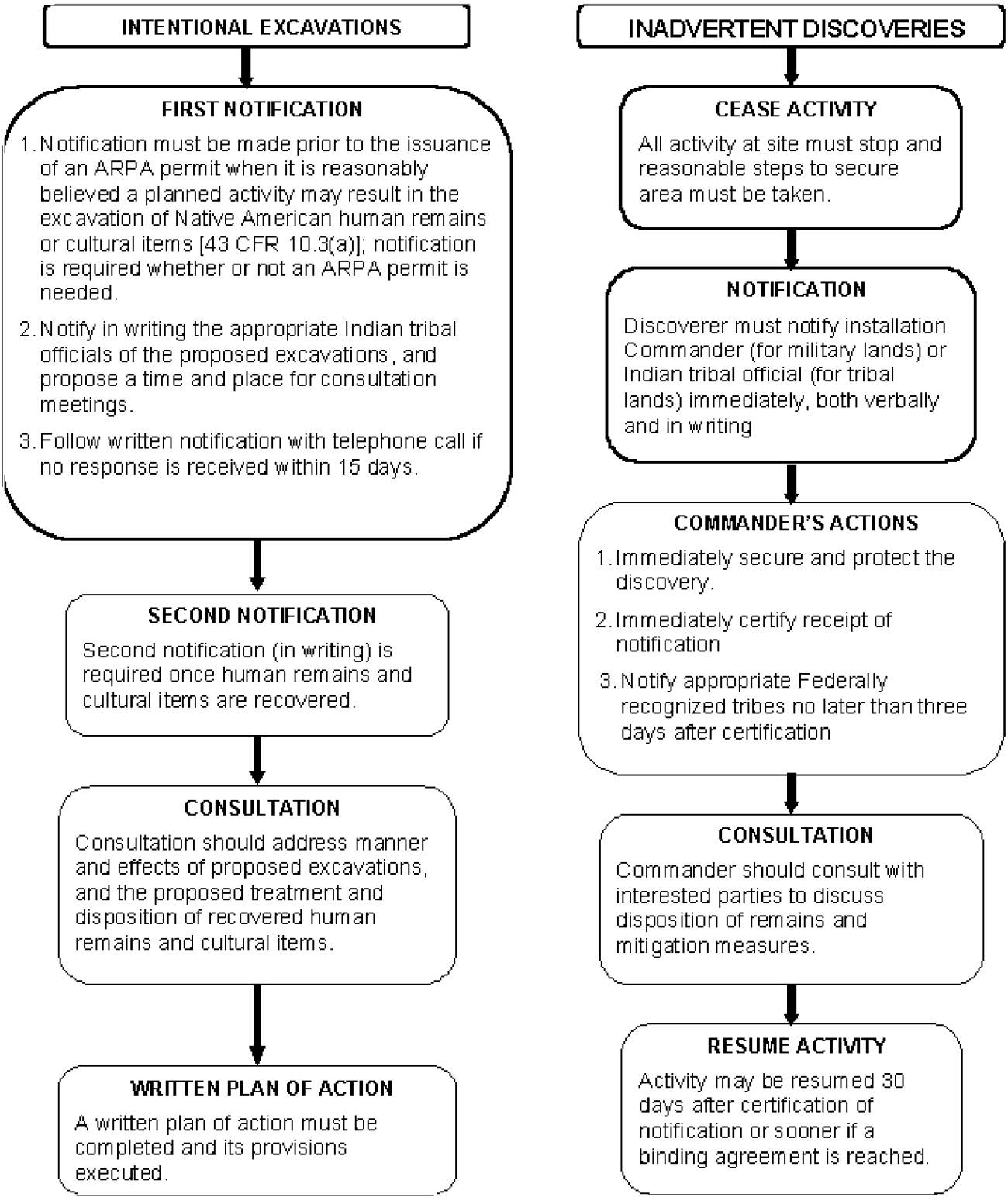

Figure F-2. Native American Graves Protection And Repatriation Act 25 USC 3001-3013

Consultation concerning intentional excavations on Federal or Indian lands is intended to provide individuals and groups with standing under the law the opportunity to have input in the planning process and in determining the treatment, disposition, and custody of human remains and certain cultural items that are exposed during excavation. Consultation is required when the installation commander reasonably believes a planned activity may result in the excavation of Native American human remains or cultural items. These procedures apply to activities on Federal or tribal lands after November 16, 1990 [43 CFR Part 10.3(a)].

Consultation concerning inadvertent discoveries of human remains and certain cultural items on Federal or Indian lands should cover the same issues with the addition of treatment of the site area in which the discoveries are made (see fig 2). Consultation is required for the inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony on Federal or tribal lands made after November 16, 1990 [43 CFR Part 10.4(a)].

III–3. National Environmental Policy Act (NEPA), and Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The installation commander should seek the participation of interested Indian tribes, including Alaska Native villages, or Native Hawaiian organizations and other members of the interested public including non-recognized Indian groups, as appropriate, in the NEPA decision-making process for actions that may affect:

1. Traditional cultural and historic resources and historic properties as defined by NHPA Section 101(d)(6);
2. Sites containing cultural items as defined by NAGPRA Section 2(3);
3. Archeological sites of religious or cultural significance according to ARPA [16 USC 470cc(c)];
4. Sacred sites whose access is protected under the American Indian Religious Freedom Act (AIRFA); or
5. Reservation lands or off-reservation treaty rights.

The installation commander may accept oral history from traditional religious cultural leaders of Indian tribes, including Alaska Native villages, and Native Hawaiian organizations as historical documentation for purposes of defining traditional cultural properties, sacred sites, or cultural items. Impacts to treaty rights and resources important in sustaining Native American activities such as plant harvesting, hunting, fishing, and water rights should, as appropriate, also be considered in the NEPA process.

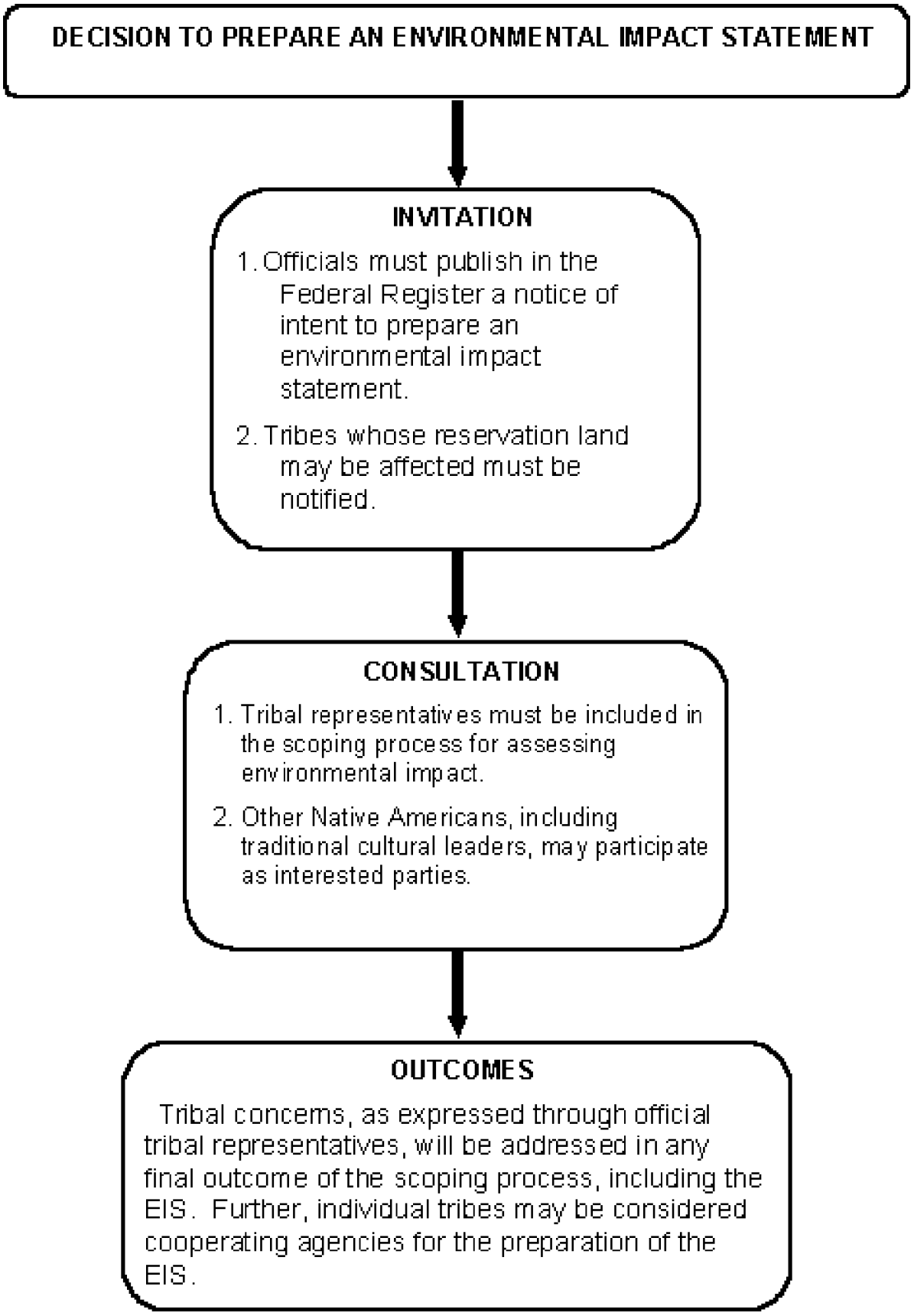

Figure F-3. National Environmental Policy Act

The installation commander should invite relevant Indian tribes, including Alaska Native villages, to participate during Environmental Impact Statement (EIS) scoping and allow them to comment on the Draft EIS (DEIS). The installation commander should also invite such participation during public review of Environmental Assessments (EA) and Findings of No Significant Impacts (FONSI). NEPA regulations (40 CFR 1500) allow Indian tribes and individuals the opportunity to comment on proposed actions during the scoping process as interested members of the public [40 CFR 1501.7(a)(1)] and, therefore, do not restrict participation to federally recognized Indian tribes, including Alaska Native villages, and Native Hawaiian organizations. In certain instances, NEPA requires the Federal agency to request comments of Indian tribes [40 CFR 1503.1(a)(ii)]. Consultation is required when a decision is made to prepare an EIS for an action affecting reservations.

Executive Order 12898, known as the Environmental Justice Executive Order, requires Federal agencies to take into account the effect, or disproportionate effect, of their actions on the health and environment of minority and low-income populations. In addition, Federal agencies must take into account the indirect effects of their actions on the health of communities that hunt or fish for subsistence. These communities may include Alaskan Native communities, as well as other Native American and Native Hawaiian communities.

In May 1995, the Deputy Undersecretary of Defense for Environmental Security [DUSD(ES)] signed the Department of Defense (DOD) Strategy on Environmental Justice. The DOD Strategy implements Executive Order 12898 for DOD and sets forth a plan for integrating environmental justice concerns into DOD decision making. DOD agencies must consider environmental justice issues during the NEPA process and during the development of Integrated Natural Resources Management Plans (INRMPs); in addition, they must consider and communicate the risks associated with subsistence consumption of fish and wildlife by the local populations.

III–4. Archeological Resources Protection Act

ARPA was enacted to protect archeological resources on public and Indian lands and to create penalties for unpermitted excavation or destruction of those resources. Primarily enacted to protect scientific interests in those resources, ARPA creates a permitting system for research-oriented archeology undertaken on Federal and tribal lands. The disposition of human remains and archeological resources obtained from Indian lands, however, is subject to the consent of the relevant Indians or Indian tribe (Sec. 5).

The installation commander is obligated to contact Indian tribes to establish the location and nature of specific archeological sites of traditional religious or cultural importance that may be on the installation or otherwise affected by Army activities. The installation commander shall consult with tribes to identify such sites and notify Indian tribes of ARPA permit requests that have the potential of causing harm to such sites (Figure 4). Such activities should be coordinated with the requirements of NHPA, NEPA, and NAGPRA.

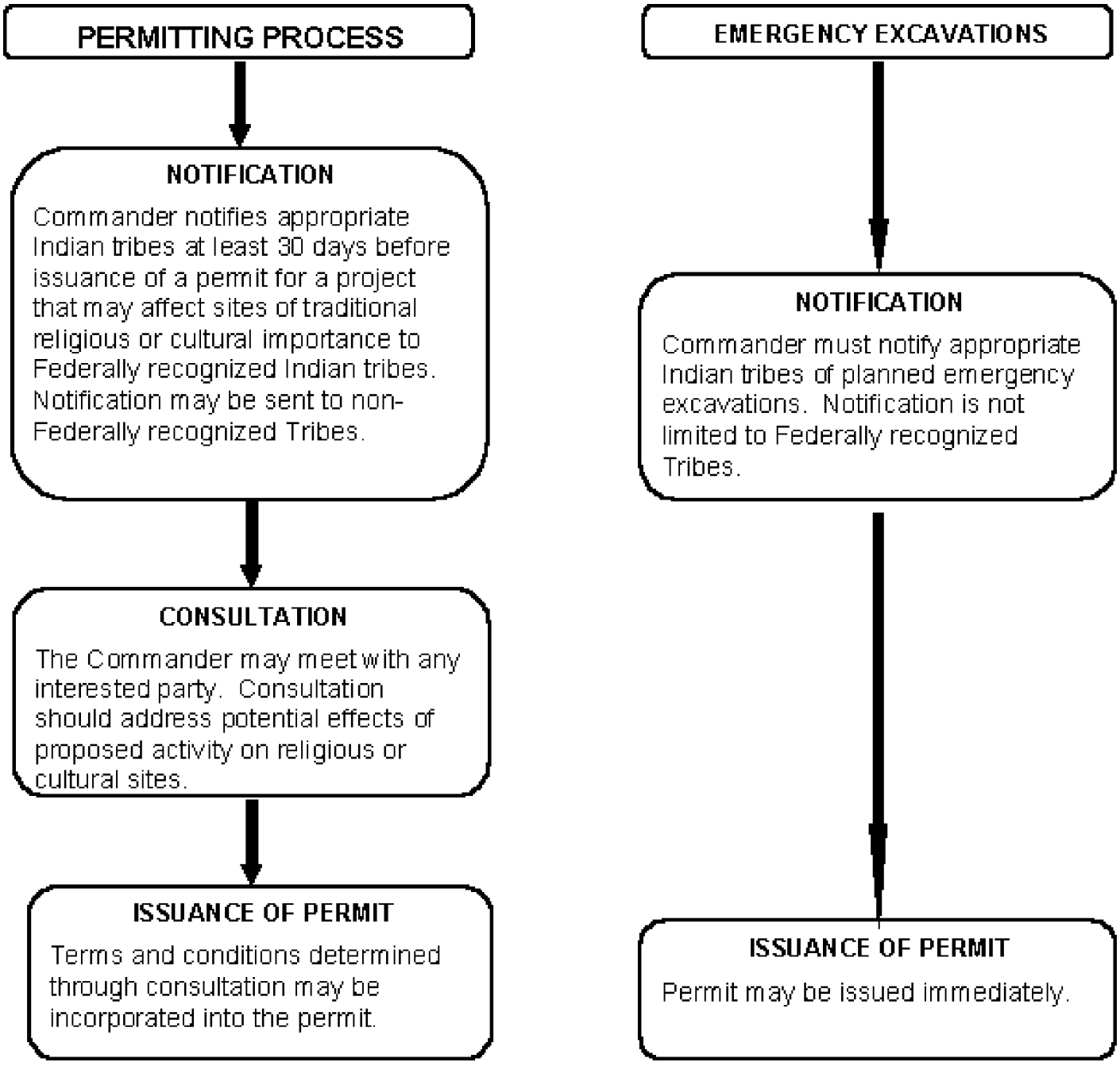

Figure F-4. Archeological Resources Protection Act

Although ARPA only calls for notification to Indian tribes prior to the issuance of a permit, Indian tribes retain the right to respond and to request further discussion of the issues presented in the notification. Furthermore, consultation is not necessarily restricted to federally recognized Indian tribes, including Alaska Native villages, and Native Hawaiian organizations.

Consultation is required to conduct work on Federal or Indian lands. Although archeological work conducted by the installation commander or under contract to the installation commander does not require an ARPA permit, all necessary consultation provisions required for a permit still apply [32 CFR Part 229.5(c)]. Notification to Indian tribes also is required when the issuance of a permit may result in harm to, or destruction of, any Indian tribal religious or cultural site [32 CFR Part 229.7(a)]. Tribal consent is required on tribal lands prior to issuance of an ARPA permit [32 CFR Part 229.8(a)(5)].

III–5. American Indian Religious Freedom Act (AIRFA)/EO 13007 Indian Sacred Sites

AIRFA was designed to protect the Constitutional right to practice traditional Native American, Alaskan Native, and Native Hawaiian religion. AIRFA calls for an evaluation of Federal policies and procedures in consultation with Native traditional leaders to determine appropriate changes necessary to protect and preserve Native American, Alaskan Native, and Native Hawaiian religious cultural

rights and practices. EO 13007 serves to provide for further protection of Indian sacred sites on Federal lands.

The installation commander must protect and preserve for Native Americans their right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to reasonable access to sites, use and possession of sacred objects, and freedom to worship according to the traditional religious practices. The installation commander should identify, through use of existing materials and consultation with local Native American groups, sacred sites that are necessary to the exercise of traditional religions and shall provide access to the installation for the practice of traditional religions, rights, and ceremonies.

The installation commander, however, may impose reasonable restrictions upon access to such sites on the installation when the commander deems it necessary to protect the safety of Native Americans, or to avoid interference with the military mission, or for other compelling reasons of national security. Although Federal agencies are not required to consult with Native Americans under AIRFA, compliance can only logically be met through some type of communication between the installation and the appropriate Native American, Alaskan Native, and Native Hawaiian groups. Notification and consultation is required in certain circumstances for compliance with EO 13007.

Section IV
Native American Consultation Process

Although consultation with Native Americans, Alaskan Natives, and Native Hawaiians is required or encouraged under various Federal statutes, in no case is the process of consultation defined. Nor can any single procedure be universally applied. Therefore, this section provides general information and a suggested broad-based approach for Army consultation with Native Americans, Alaskan Natives, and Native Hawaiians. Using the following information as a guide, the installation commander should develop procedures for consultation that take into consideration issues specific to the installation and to the Native Americans, Alaskan Natives, and Native Hawaiians with whom consultation will occur.

In all cases, consultation with Tribal representatives should proceed on a government-to-government basis. The installation commander should formally initiate government to government relations with a formal letter to the elected head of the tribal government(s) and should designate and identify in writing an installation Coordinator for Native American Affairs. Any following consultation may then be conducted by the installation commander's designee working on a staff to staff basis with the designated tribal representative. Consultation should begin as early as possible in terms of planning and decision-making activities. Early consultation will not only provide Native Americans, Alaskan Natives, and Native Hawaiians with the opportunity to help develop plans to avoid adverse effects, but will also afford the Army sufficient time to modify plans, identify alternate sites, etc. early in the planning process to avoid costly delays and project redesign. Consultation should proceed in an open manner while still protecting confidential information to the greatest extent possible. Throughout the consultation proceedings, a good-faith effort should be made both to fulfill the provisions of Federal laws and regulations and to resolve the consultation issue(s) in a mutually acceptable manner to the extent possible. If there are existing tribal or Native Hawaiian consultation protocols, such protocols should be obtained and followed to the maximum extent possible.

IV–1. Planning for Consultation

Before consultation with Native Americans, Alaskan Natives, and Native Hawaiians can begin, the following should be identified:

1. The appropriate groups and representatives who should be invited to consult;
2. Relevant tribal protocols, procedures, regulations, and cultural etiquette;
3. The activities or issues requiring consultation; and
4. The specific laws and regulations that mandate consultation, and the specific laws and regulations that encourage consultation.

It should be noted that identifying the consulting parties, issues and activities, and legal mandates must be a coordinated activity. The activities and issues that require consultation will determine largely which Federal statutes will apply. Specific Federal statutes may require or encourage consultation with certain parties; and they also may outline either general or specific consultation procedures or schedules that should be followed.

Regardless of the specific legal mandate that prompts consultation, the *general form of consultation* should include the following components:

1. Identification of the appropriate consulting parties;
2. Procedures for notifying the consulting parties;
3. The consultation schedule, process, and content;
4. Resolution of the consultation issue(s);
5. Dispute resolution; and
6. Final actions.

Each of these aspects of the consultation process is discussed below.

IV–2. Identification of Consulting Parties

At a minimum, the Indian tribes, including Alaska Native villages, and Native Hawaiian organizations with whom consultation should occur are those groups that have tribal or trust lands in proximity to the Army installation, those that occupied the area in aboriginal times, and those with which the Army installation has previously held consultation proceedings. These groups would include:

1. Indian tribes owning land adjacent to an installation or that may be affected by Army activities is the first criterion for determining who must be contacted for consultation. Information on the locations and general boundaries of most Indian lands in the continental United States can be found on the 1993 map entitled "Indian Land Areas" prepared by U.S. Geological Survey in cooperation with the Bureau of Indian Affairs. Army installations also should acquire State or local maps that show the boundaries of Indian lands in greater detail.
2. All Indian tribes who occupied the region in aboriginal times should also be contacted regarding consultation issues. Information on aboriginal occupancy can be found on the 1993 map entitled "Indian Land Areas Judicially Established 1978" prepared in 1993 by the U.S. Geological Survey in cooperation with the Indian Claims Commission and the Bureau of Indian Affairs. This map pertains solely to the continental United States, and it should not be considered an entirely definitive source of information.
3. All Indian tribes with which the Army installation has had previous relationships should also be contacted, since there is already a demonstrated need for consultation with these groups. Such information generally should be available at each Army installation.

The representatives of each Indian tribe, including Alaska Native villages, who will or should participate in consultation, are designated by each Indian tribe.

Contacting the appropriate Bureau of Indian Affairs (BIA) Area or Agency office also may be helpful in identifying all appropriate federally recognized tribes. Lists of Tribal leaders or other Tribal representatives are maintained by the BIA and the U.S. Department of the Interior, National Park Service Departmental Consulting Archeologist. In specific cases, religious leaders must be identified by

specific Indian tribes; formal requests should be made to tribal leaders for assistance in identifying traditional religious leaders, when appropriate. In cases of recent human remains, a good-faith effort to identify the closest lineal descendant must be made. Procedures for such identification must be developed on a case-by-case basis with the assistance of the various tribal representatives.

In addition, an attempt should be made to determine which non-Federally recognized Native American, Alaskan Native, or Native Hawaiian groups eventually may be brought into consultation as interested parties under certain laws and regulations (for example, NEPA, AIRFA, 36 CFR 800). Such groups may be those who reside in proximity to the Army installation or those who have had previous consultation experiences with the installation. A list of all such groups and their representatives should be compiled, maintained, and updated on a regular basis by each installation as part of the installation ICRMP.

IV–3. Notification

Initial notification to tribal representatives should be made in letter form signed by the installation commander to the head of the tribal government. Written notification should be sent by certified mail or similar device that offers receipt of delivery to the addressee. Initial notification should include—

1. A statement of the potential issue(s) that requires consultation (for example, a particular procedure that requires review, a particular construction activity being proposed, inadvertent discovery of human remains);
2. The specific designated individual(s) who will consult on behalf of the Army installation commander;
3. A request of the Indian tribe to designate a representative(s) (including name, title, address, and phone number) for consultation with the installation commander's designee;
4. A request of the Indian tribal representative to assist in the identification of traditional religious leaders, if appropriate, and lineal descendants (for human remains);
5. A suggested time and place for an initial consultation meeting; and
6. A request of the Indian tribal representative for recommendations on how the consultation process should be conducted, including a timetable for consultation and resolution.

Installation commanders should send documentation (for example, project plans showing areas to be affected) with the initial notification. The notification should contain a request for information from the tribal representative. It may be useful to apprise in writing the appropriate BIA Area or Agency office of impending consultation.

IV–4. Schedule/Timetable for Consultation

The timetable for consultation will depend primarily on the issues requiring consultation. Planning and procedural issues may allow for consultation over a period of months or even years. Consultation for inadvertent discoveries made during an ongoing construction project would require a much shorter time frame, perhaps a matter of days or weeks. In all cases, the consultation timetable should be developed to allow for the greatest opportunity possible for appropriate tribal representatives and others to participate in consultation. These considerations also should extend to the time necessary to review relevant project documentation, to make site visits, and to view human remains and cultural resources. Tribal representatives should also be afforded the opportunity to develop, in consultation with other tribal members if appropriate, a position on the part of the Indian tribe for the preferred methods of resolving the issue.

The development of a timetable for consultation should consider the financial and personnel resources of the Indian tribe(s) to be consulted. The distance and costs of travel that will be required of the Indian tribal representatives (or others) for consultation purposes may place constraints on their ability to consult effectively, particularly for more complex issues. These considerations should extend to the amount of time that will be necessary to adequately review information and to develop a plan of resolution on the part of Indian tribal representatives. In developing project schedules, installations should build in sufficient time for full and meaningful consultation.

IV–5. Type of Response

The Army representative that is responsible for leading consultation on behalf of the Army may request, but cannot require, written responses from Indian tribal representatives or attendance at a meeting. Because some Indian tribes do not have sufficient resources to develop or participate in a formal consultation process, non-response within a specific time frame or in a specific format must not be interpreted as acquiescence on consultation issues. A non-response or no comment from a tribe or Native Hawaiian organization should not necessarily be interpreted as a lack of interest or as agreement. If an Indian tribe, or tribal representative, does not respond in the requested time frame, follow-up notification should be made and alternative methods of consultation should be attempted.

The Army representative responsible for making initial notifications and leading all follow-up consultation on behalf of the Army installation should document all consultation procedures. All written correspondence should be sent via certified mail or similar instrument that provides certification of delivery. The installation should keep written records of all phone and other verbal communications and maintain detailed records of all face-to-face meetings. Copies of such documentation should also be sent to the appropriate Indian tribes and other consulting parties as a matter of record. Indian tribes, including Alaska Native villages, and Native Hawaiian organizations are under no obligation to respond. However, the installation commander should document the good-faith effort to consult prior to proceeding with the planned action. Respect and an open mind are needed.

IV–6. Consultation

Consultation for some specific issues may consist solely of a single meeting between appropriate Army and Indian representatives. More complex or long-ranging issues may require numerous meetings, exchanges of information, and documentation. All consultation actions must represent good-faith efforts at resolving any dispute or conflict. Non-confidential information should be shared as soon as is practical with all consulting parties. It may be useful to contact other Army installations that have undergone consultation proceedings on similar issues to determine potential methods to resolve issues.

Consultation should identify, as early as possible, all potential issues that may result from a particular procedure or activity, so that resulting consultation meetings will not address these issues in a piecemeal fashion. A variety of alternatives for resolving disputes or conflicts should be presented for consideration, not simply the Army installation's preferred method for a particular project. The Army representative should be prepared to present as much documentation on the project as is practical. Such documentation also should be made available as early in the consultation process as possible. The Army representative also should clearly outline any real constraints imposed on the project (such as time deadlines, financial considerations, etc.) that may affect the Army's ability to alter planned actions.

For procedural and planning decisions, consultation should be designed to result in mutually acceptable terms for avoiding or minimizing affects on Native human remains or cultural resources. For proposed construction or land use activities, intentional excavations may be planned to determine whether any Native cultural resources are present. The scope and procedures used for intentional excavations should be developed in consultation with all interested parties. Consultation should also include the discussion of procedures to

follow should inadvertent discoveries be made after intentional excavations have been completed and the project proceeds.

IV–7. Agreement

The resolution of issues requiring consultation may take many forms and, thus, should be developed on a case-by-case basis. For planning and procedural issues, revisions to plans or procedures that take into consideration Indian tribal concerns may be all that is necessary. For ongoing activities that may affect Native American, Alaskan Native, or Native Hawaiian human remains, cultural resources, traditional cultural properties, or religious sites, mutually acceptable resolution should be reached and may involve altering the time-frame of such activities, modifying the activities themselves, or relocating the activities to avoid affecting those resources.

Consultation should involve, early in the process, a discussion of the various alternatives and flexible solutions. Alternatives may include written documents (revised plans or procedures, memoranda of agreement, etc.), alterations of activities (such as relocation of the activities, reduction in the scope of activities), or ceasing specific activities altogether. Alternatives may also include mitigation measures. For example, land modifications that may restrict access in one location to a sacred site may be offset by creating a new access point in another location. Promises regarding alternatives or mitigation measures should not be made if the can not be kept.

IV–8. Dispute Resolution

In some cases, it may not be possible for an Army installation and the interested Indian tribes to reach resolution of consultation issues acceptable to all parties concerned. Although a Review Committee was established under NAGPRA to handle disputing claims by various Indian tribes for human remains and cultural items in Federal collections, the Review Committee is advisory and their purview does not extend to the NAGPRA provisions for intentional excavations and inadvertent discoveries. None of the other applicable cultural resources laws designates a similar committee, although various agencies, such as State Historic Preservation Officers and the Advisory Council for Historic Preservation, must be included as consulting parties under some regulations, and they must be signatories on memoranda of agreement that are developed under the terms of Section 106 of the NHPA.

If specific Army installations and Indian tribal representatives cannot reach mutually acceptable terms for resolving consultation issues, it may be prudent to designate alternative parties to resolve the situation. Within the Army, consultation mostly will be the responsibility of representatives of individual Army installations. Thus, major commands could designate Army officials that are not stationed at the specific installation in question to assist with dispute resolution for the Army. It also may be suggested that Indian representatives turn to the Bureau of Indian Affairs (area or agency office) to help resolve disputes. Hawaii does not have a BIA component and an alternative dispute resolution process should be agreed upon. The designation of such dispute resolution procedures and parties should be discussed early on in the consultation process.

IV–9. Final Action(s)

Final actions that result from consultation should take the form of a written agreement signed by all consulting parties, an MOA or PA for NHPA actions, and a CA or Plan of Action for NAGPRA compliance actions. The purposes of such agreements are to record the terms and bind, through signatures, the consulting parties to the terms of the agreement.

The agreement document should include a summary of the consultation issues, details of the agreed-upon actions or resolution, and a timetable for implementing the conditions of the actions. All consultation parties should receive a copy of the signed agreement prior to taking any action called for in the agreement. In the event that participating Indian tribal representatives are not able to attend meetings (if consultation occurs primarily through phone calls or written correspondence), an agreement should be developed and signed by the appropriate Army representative, and a copy of this signed agreement should be sent via certified mail (or similar method) so that the Army representative receives a certification of receipt for the consultation files.

Final actions may involve modifications to proposed or ongoing activities rather than written documents. Modifications may include a change in a construction project to avoid buried human remains or cultural resources, selection of a new site altogether for a construction activity, or performing mitigation measures to offset effects of the project.

In some cases, a determination of the disposition (custody) of Native American human remains and or cultural items that are recovered through intentional excavation or through inadvertent discovery may be the final action of consultation. For these cases, a NAGPRA Plan of Action may be prepared that contains, among other things, a description of the human remains or cultural materials involved, a listing (with names and addresses) of the tribal representatives (or lineal descendants) that are to take custody of the remains or cultural items, and a schedule for implementing the terms of the agreement (43 CFR 10.3 and 10.4). Prior to disposition, the Army must provide public notice of the proposed disposition according to 43 CFR 10.6(c).

IV–10. Consultation Agreements

Federal cultural resources legislation allows for the development of several types of broad-based and specific agreements for the protection of cultural resources or for mitigating adverse impacts to them. For example, two types of agreements are outlined in Section 106 of the NHPA: Programmatic Agreements (PAs) and Memoranda of Agreement (MOAs). NAGPRA also recommends that Comprehensive Agreements (CAs) be devised to address activities that could result in the need for consultation under NAGPRA [43 CFR Part 10.5(f)]. The installation commander should consider developing broad-based consultation agreements with Indian tribes, including Alaska Native villages, and Native Hawaiian organizations with whom the installation has consulted or should consult.

Such agreements should be devised to address concerns and issues, and to outline procedures and protocols to follow when specific consultation needs arise. For example, a consultation agreement may include key points of contact (including position, name, address, and phone number), descriptions of notification procedures, a discussion of potential schedule requirements or restrictions, protocols for consultation meetings, dispute resolution procedures, and types of final agreements that may be reached. Matters of confidentiality and public disclosure of consultation documentation also could be addressed in a consultation agreement since information obtained under NAGPRA is not exempted from FOIA.

Consultation agreements also should discuss the relative authority, responsibilities, and obligations on the part of each consulting party. The information would include descriptions of the Army installation's chain of command for decision-making and the tribal council's structure for reaching consensus on consultation agreements. The Confederated Tribes of the Umatilla Indian Reservation (CTUIR), for example, has developed a Memorandum of Agreement and a Cooperative Agreement between the U.S. Army Corps of Engineers, Portland District, and the CTUIR. Such agreements are intended to help establish a consistent approach to consultation. The agreement should include provisions for legal representation, where appropriate, and should outline procedures for providing advance notification to Indian tribes, including Alaska Native villages, and Native Hawaiians if the installation commander or installation consultation representative intends to have legal counsel at consultation meetings. The basis of any broad based consultation agreement must be founded on mutual respect, and recognition of sovereignty and treaty rights.

Section V
Army Consultation Recommendations

Installation commanders can facilitate consultation with Native Americans, Alaskan Natives, and Native Hawaiians by incorporating consultation into the existing Army institutional structure. The installation commander should consider the following:

1. Establishment of an ongoing consultation relationship with Native Americans, Alaskan Natives, and Native Hawaiians;
2. Designation of a Coordinator for Native American Affairs; and
3. Incorporation of consultation procedures into existing Army planning and procedural documents.

Taking into consideration these avenues for developing consultation procedures for the installation will serve the Army's needs by streamlining the consultation process while ensuring that appropriate legal requirements are met. It also will provide Native Americans, Alaskan Natives, and Native Hawaiians with an effective and meaningful way to resolve consultation issues.

V–1. Establishing an Ongoing Consultation Relationship

The primary purpose of Army consultation with Native Americans, Alaskan Natives, and Native Hawaiians is to provide representatives with the opportunity to express their concerns early in the planning process for Army activities. Early participation will help ensure that such concerns are addressed when projects are being planned, rather than after they have been initiated. Early participation by Native representatives in the development or revision of Army procedures will assist the Army in minimizing the potentially damaging effects of Army activities. It also will help the Army avoid lengthy and costly delays in implementing those projects because of potential adverse effects on resources of concern to Native groups.

Much of the Federal legislation calling for consultation involves specific projects-the development or revision of operating procedures, planned construction, or ongoing training activities, etc. For such projects, it is imperative to determine whether the activity or issue requires consultation, which specific laws and regulations mandate consultation, and the appropriate Native individuals or groups who, under the specific statute(s) that require consultation, have a legal basis for inclusion in the consultation process.

To ensure early participation by Native Americans, Alaskan Natives, and Native Hawaiians in the planning process, the installation commander should develop a consultation relationship with relevant Native groups in advance of the need for consultation on a specific activity or project. The installation commander should identify which Native American, Alaskan Native, or Native Hawaiian groups or individuals will most likely be concerned with the effects of activities at the installation, and compile and maintain a list of all such groups, their official representatives, and addresses. In addition, an attempt should be made to determine which state-recognized Native American groups eventually may be brought into consultation as interested parties under certain laws (for example, NEPA, 26 CFR 800). Such groups may include those who reside in proximity to the Army installation, those who previously have had consultation experiences with the installation, or Indian groups who occupied land in or near the installation in aboriginal times.

Developing an ongoing consultation relationship in advance of a project-specific need undoubtedly will streamline the consultation process. Most importantly, it will provide the opportunity to develop a sense of trust and mutual respect between the consulting parties. Written policies and verbal agreements are of little utility if the recommended actions are never implemented. The best approach to developing a successful consultation relationship, then, is to build a record of negotiated and implemented agreements that are mutually acceptable, to the degree possible, to all consulting parties. This record of successful consultation will strengthen consultation relationships and the consultation process itself.

V–2. Coordinator for Native American Affairs

The installation commander is responsible for overseeing consultation requirements and for fulfilling the requirements of Federal cultural resources legislation. As effective means for developing an ongoing consultation relationship and for ensuring consistency in consultation proceedings and outcomes, the installation commander should consider appointing a Coordinator for Native American Affairs. This coordinator position should be filled by a full-time installation staff member who has experience with Native American concerns, such as the installation Cultural Resources Manager. The Native American coordinator should have the authority to enter into negotiations on behalf of the Army and to develop agreements to take back to the installation commander for approval and signature.

Designating a coordinator at the installation level provides consistency not only in consultation proceedings with Indian tribes but also within the installation. Some consultation issues may require an extensive period of time to resolve, and consultation agreements may take a similar amount of time to implement. Thus, turnover in installation personnel inadvertently can hinder good-faith efforts at resolving consultation issues if newly assigned personnel are not familiar with the installation's consultation history.

A coordinator can bridge this gap by ensuring that the appropriate installation personnel have access to the necessary information and also by maintaining the good-faith relations developed with tribal representatives through previous consultation efforts.

V–3. Army Planning and Procedural Documents

Installation commanders can integrate concerns of Native Americans, Alaskan Natives, and Native Hawaiians into existing Army planning and management procedures. Specifically, cultural resources and natural resources planning documents should address compliance both with cultural resources legislation (for example, NHPA and ARPA) and other statutes specifically dealing with Native American, Alaskan Native, and Native Hawaiian issues (for example, NAGPRA and AIRFA). Integration of these issues with Army planning documents will be most successful if accomplished in consultation with Native representatives.

a. Integrated Cultural Resource Management Plans Integrated Cultural Resource Management Plans (ICRMPs) must be updated every 5 years. Thus, ICRMPs should be revised to take into account consultation agreements that have been negotiated and to address potential future needs for consultation. The ICRMP should contain internal operating procedures for implementing such agreements. ICRMPs are intended to provide the installation commander with the information necessary for making decisions affecting cultural resources and they are the appropriate document for the integration of Native American, Alaskan Native, and Native Hawaiian concerns.

b. Integrated Natural Resource Management Plans and Integrated Training Area Management
ICRMPs must contain provisions for coordinating cultural resource management with other aspects of installation training and testing activities, including ecosystem management. Thus, the ICRMP should be integrated with the development of installation Natural Resource Management Plans (INRMPs) and the Integrated Training Area Management (ITAM) program. With regard to the concerns of Indian tribes, including Alaska Native villages, and Native Hawaiian organizations, the integration of such plans should address both the common and unique attributes of cultural resources and natural resources management.
For example, protecting the use of plant resources and sacred site areas by Native peoples for religious purposes or other cultural ceremonies may fall within the purview of both ICRMPs and INRMPs at the installation level. INRMPs should address the types of management activities that require consultation with Native Americans, Alaskan Natives, and Native Hawaiians under Section 106 of

the NHPA and compliance with other relevant laws, such as ARPA and NAGPRA. In addition to integrating cultural resources planning with natural resources management, the development of INRMPs should address, according to AIRFA, the effects of terrain modification and plant species composition, among other activities, on Indian religious or other cultural practices.

c. Master Plan and Training/Range Master Plan Consultation issues of concern to Native Americans, Alaskan Natives, and Native Hawaiians transcend matters of cultural resources and include broader issues of religious freedom, access to sacred sites, the protection and treatment of human remains, and environmental concerns. Therefore, consultation issues that are outlined in ICRMPs and INRMPs also must be coordinated with installation Master Plans and Training/Range Master Plans that deal with the entire range of installation activities. Such holistic planning will help ensure that all relevant concerns of Native Americans, Alaskan Natives, and Native Hawaiians are included in installation planning documents. Such planning efforts also will contribute to and result from the development of successful ongoing consultation relationships with Native Americans, Alaskan Natives, and Native Hawaiians.

SECTION VI
Traditional Cultural Properties and Sacred Sites

Two mandated components of the consultation process are (1) to identify traditional cultural properties and (2) to accommodate access for ceremonial use of Native American sacred sites on Army land. In addition, steps must be taken to avoid adversely affecting the physical integrity of sacred sites.

VI–1. Definitions

TRADITIONAL CULTURAL PROPERTY (TCP):

> A traditional cultural property is a type of historic property that is eligible for inclusion in the National Register of Historic Places because of its traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization. (NHPA Section 101 (d)(6)).

SACRED SITE:

> An Indian sacred site is defined as any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site (Executive Order 13007).

It is important to keep in mind that TCPs are identified and evaluated with reference to the National Register of Historic Places whereas sacred sites, as defined in Executive Order 13007, are identified by Indian tribes with reference to their own traditional religion. The range of tribes that should be consulted about TCPs could be different than that required under other statutes such as NAGPRA, because traditional cultural properties are tied to the "continuing cultural identity...of a living community," whereas the cultural affiliation requirements of NAGPRA have a broader historical scope.

VI–2. Legal Mandates

National Historic Preservation Act (16 U.S.C. 470a)

In addition to protecting properties with historical, architectural, and archaeological significance, the National Historic Preservation Act (NHPA) addresses the importance of properties that have religious and cultural importance.

Section 101(d)(6)(A): "Properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register."

Section 106: Federal agencies shall "take into account the effect of [an] undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register."

Section 110(a)(2)(B) mandates that each Federal agency's preservation program shall ensure "that such properties under the jurisdiction or control of the agency as are listed in or may be eligible for the National Register are managed and maintained in a way that considers the preservation of their historic, architectural, archaeological, and cultural values in compliance with section 106. . ." (emphasis added).

American Indian Religious Freedom Act (42 U.S.C. 1996)

Native American traditional religious practitioners are guaranteed access to sacred sites under the American Indian Religious Freedom Act (AIRFA).

"On and after August 11, 1978, it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites."

However, the regulations to implement AIRFA were never developed, so its intent was not achieved until the recent issuance of Executive Order 13007 concerning sacred sites.

Executive Order 13007

The promise of AIRFA was achieved through Executive Order 13007, issued 24 May 1996. It directs Federal land managing agencies to accommodate access to sacred sites by traditional Indian religious practitioners and to protect those sites from adverse effects.

> Section 1(a): "... each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, to the extent practical, permitted by law, and not clearly inconsistent with essential agency functions, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites."

Executive Order 13007 further stipulates that agencies shall report within one year on any changes necessary for its implementation.

> Section 2(b): "Such report shall address...(i) any changes necessary to accommodate access to and ceremonial use of Indian sacred sites; (ii) any changes necessary to avoid adversely affecting the physical integrity of Indian sacred sites; and (iii) procedures implemented or proposed to facilitate consultation with appropriate Indian tribes and religious leaders and the expeditious resolution of disputes related to agency action on Federal lands that may adversely affect access to, ceremonial use of, or the physical integrity of sacred sites."

VI–3. Steps for Consultations on TCPs and Sacred Sites

The first step in identifying TCPs and sacred sites is to conduct background research in the ethnohistory of the region to identify culturally affiliated tribes, their ceremonies, and the particular sites or types of sites that are held sacred by those tribes. After background research has been conducted and the appropriate tribes contacted, consultation meetings between the installation's Native American Coordinator and tribal representatives should be held to identify any specific sites that are important to those tribes. At this

point it may be appropriate to visit each site with tribal representatives to verify its significance, assess its physical integrity, and determine any steps necessary to protect and accommodate access to the site. The integrity and significance of each site should be documented to the greatest extent possible without compromising culturally sensitive information. Any agreements reached through consultation should be formalized in a Memorandum of Agreement (MOA) to be signed by the installation commander and the official tribal representatives. Each of these steps is discussed in more detail below.

1. Identifying Cultural Affiliation.
2. Initiating Consultation.
3. Notification/Schedule/Response.
4. Identifying TCPs and Sacred Sites.
5. Documenting TCPs and Sacred Sites.
6. Conducting Site Visits.
7. Consultation Agreements for Access to Sacred Sites.

1. Identifying Cultural Affiliation

Refer to Section IV-1 "Identification of Consulting Parties."

2. Initiating Consultation on TCPs and Sacred Sites

Consultation is the process through which Native Americans, Alaskan Natives, and Native Hawaiians with traditional ties to sites on U.S. Army land can participate as interested parties in the planning process for activities that may affect those sites. Consultation gives Native Americans an opportunity to voice their concerns and have their comments considered in the initial stages of the planning process. It should be made clear that consultation implies discussion and negotiation and that a satisfactory resolution may require several meetings.

While consultation must be initiated with official tribal representatives on a government-to-government basis, it cannot be assumed that the tribal government speaks for every member of the tribe where traditional religious issues are concerned. Like any society, Indian tribes display a wide range of internal variation in the value that individuals place on the maintenance of traditional practices. It is important to note that Executive Order 13007 reserves the authority for identifying sacred sites to "an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion" (emphasis added). An effort should be made to identify such individuals early in the consultation process so they can be contacted directly. Any disputes should be resolved through the process detailed in Section IV-7 of these guidelines, with the additional assistance of an ethnographer who is familiar with the specific tribe. Finally, it should be kept in mind that some traditional elders may not speak English and that some sacred concepts require the use of ritual terminology, so consultation may require the use of native languages and a translator.

3. Notification/Schedule/Response

Refer to Section IV-2 through IV-4.

4. Identifying TCPs and Sacred Sites

While thousands of historical, architectural, and archaeological studies have documented the significance of properties on U.S. Army installations, few studies have addressed the traditional cultural concerns of Native American groups, as stipulated in the NHPA. TCPs are locations that are important in maintaining the beliefs, customs, or practices of a living community. A TCP must be a tangible location, but the attributes that make it significant may be intangible. Because Indian and Native Hawaiian communities are rooted in an oral rather than a written tradition, TCPs are best identified through direct consultation with traditional leaders and religious practitioners. Traditional cultural significance can rarely be documented or proven scientifically; rather, it requires good-faith consultation with appropriate religious authorities. It is also advisable for the installation to arrange for an ethnohistorian who is familiar with the cultural history and tribes of the region to conduct background research. This holds true even for installations that have conducted archaeological surveys, since many TCPs and sacred sites have no recognizable characteristics that would have been noted in an archaeological survey.

A common problem in identifying TCPs is that there might be no cultural modification to distinguish them from the surrounding landscape. A TCP may be a natural stand of plants or another natural resource used in ceremonies, or it may be a culturally unmodified landscape feature that has strong spiritual or mythological significance. An archaeological site that has already been determined eligible to the National Register of Historic Places (NRHP) under NRHP Criterion D ("information potential") may also have traditional cultural significance for a living community under Criterion A ("association with significant historical events") or Criterion B ("association with the lives of significant persons"). The "event" or "person" associated with the site may be from recorded history or from traditional mythology. It is probable that previous archaeological surveys conducted by scientific methods would not have addressed such mythological associations, but it is just this kind of association that is important to many traditional peoples. The difference between an archaeological site and a TCP or sacred site may not be visually apparent to an outsider, but it is an important distinction for land managers to keep in mind. These places cannot be treated in the same manner as archaeological sites, since the adverse effects of a proposed undertaking cannot be mitigated through data recovery (excavation). In fact, such action would likely destroy the sacred power of the site for those who value it.

In many societies, tradition prohibits the discussion of certain spiritual matters with outsiders. It is important to understand and respect the role that certain sites and rituals play in traditional societies, and the cultural restrictions on revealing sacred information. In some societies certain "religious" information is regarded as powerful, even dangerous, and should be revealed only under certain conditions or to certain people. Most TCPs and sacred sites are not known to the general public, including even some tribe members, so it is not uncommon for them to be "discovered" only when threatened by a proposed undertaking. If the site in question has not previously been threatened by any undertaking, then there has been no reason for those who value it to reveal its existence or significance. However, the definition of sacred sites used in Executive Order 13007 requires "that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site."

5. Documenting TCPs and Sacred Sites

A necessary condition for designating a property as a TCP is that it must be eligible for listing on the NRHP; therefore, a certain level of documentation is required for a determination of NRHP eligibility. Sacred sites need not be documented to NRHP standards, but a minimal level of documentation is necessary for effective protection of the site at the installation level. Documentation should include locational information, a physical description, and supporting evidence of the property's cultural significance. When possible, this should include photographs, field notes, tape recordings of interviews, and primary written records. Documenting these sites can present substantial challenges: (a) the boundaries of the property and the area of potential effect are often difficult to define; (b) the time frames that apply in traditional cultural practices may not coincide with scientific standards normally applied in cultural resource management; and (c) cultural constraints, discussed in the preceding

paragraph, may inhibit the sharing of required information.

Establishing boundaries for a TCP can be problematic because the traditional cultural use of a site may occupy only a small area, but may require certain environmental conditions that must be considered when determining the area of potential effect. For example, a vision quest site may only occupy a few square yards, but requires a large buffer zone to facilitate meditation and communication with the spirit world. On the other hand, if the site in question is a stand of plants required for ceremonial activities, it may be enough to mark the area on installation maps for avoidance and perhaps fence or flag the site itself. Usually, if the physical location of the property can be protected, then the required conditions for periodic ceremonial use can be negotiated through consultation.

It is necessary to try to understand traditional places through the eyes of those who value them. Documentation of a TCP or sacred site should include a description of the site as it is perceived in the traditional belief or practice. What may appear to be a culturally unmodified natural landform may represent an important mythological event or individual to a traditional community. For example, a certain boulder on the edge of a cliff may represent a bag of ancestors' bones left there by a mythological hero. Documentation of these places should include as much detail as possible without compromising culturally sensitive information.

The chronology of the property should be established. There are two different time frames that should be addressed. The first is the period in which the property gained its significance, be it a specific historical date or a mythological "dawn of time." The second is the period that the site was actually physically used for traditional practices or religious ceremonies. Documentation of this time period will usually involve interviews with traditional cultural authorities and traditional religious leaders as the main source of information, supplemented by historical records, ethnographic studies, and archaeology. In some cases, access to the site has been denied for decades or generations due to changing land ownership, including the establishment of military bases. Any such historical changes in the use of the site should be documented and considered in the consultation process. This kind of information may be important in assessing the property's role in maintaining the continuing cultural identity of a traditional community.

6. Site Visits

Once a TCP or sacred site has been identified, the land manager and traditional religious practitioner(s) should visit the site to confirm the identification, assess the site's condition, and discuss any necessary conditions for the protection and ceremonial use of the site. Any conditions necessary for appropriate respectful or ritual behavior at the site should be discussed before the visit, and U.S. Army personnel should display appropriate respect at the site.

A key point in the identification process for TCPs and sacred sites is that tribes must know about the existence and approximate location of specific properties that are important to them. Open-ended field surveys for possible sacred sites on U.S. Army installations should be discouraged. It is not enough that a site fits the model of what a particular community considers a sacred site; rather, the specific site must be known and identifiable. If a site is truly important to the ongoing traditions of a community, a knowledgeable representative of that community should be able to characterize its general location and appearance. Therefore, Army personnel should not generally question a traditional religious leaders determination that a site is sacred.

7. Consultation Agreements for Access to Sacred Sites

Any agreements reached through the consultation process should be formalized in either a letter from the installation commander to the tribal government or an agreement document signed by both parties. If a tribe has no concerns about the effect of the proposed undertaking, that conclusion should be documented in an official letter thanking the tribal representative for participation. If more than one issue was resolved through consultation with a particular tribe, all agreements with that tribe should be included in one broad-based agreement such as a Memorandum of Understanding. The format of this document can vary widely, but in general it should include (a) the location and nature of the TCP or sacred site (or some reference like "the sacred site in the northwest portion of Training Area X, depicted on the attached map"); (b) any mitigation agreement reached through consultation (for example, site avoidance during training maneuvers or access for ceremonial use during certain dates); (c) the names of any individuals authorized to visit the site; and (d) any other stipulations agreed to during consultation. If an agreement includes permission to visit sacred sites for ceremonial purposes, the MOU should specify the dates on which access will be permitted, who will be admitted (whether it be any enrolled tribal member or specific individuals), and procedures to coordinate site visitation with security and or range control.

VI–4. Confidentiality Issues

A valid concern of many tribes is that culturally sensitive information about the location and sacred nature of sites, once documented for management purposes, would be available through the Freedom of Information Act (see Section II-1). An important aspect of FOIA not discussed in Section II-1 bears on sacred sites and Executive Order 13007. One of the nine conditions under which information can be withheld from public disclosure under FOIA is (#1) "documents classified pursuant to a presidential Executive Order." Executive Order 13007 stipulates that "where appropriate, agencies shall maintain the confidentiality of sacred sites." This would appear to provide protection for culturally sensitive information concerning sacred sites, but the installation commander should still discuss these issues with the tribal representatives and the staff Judge Advocate at the beginning of the consultation process. The safest course of action is to request only as much information as is necessary to resolve consultation issues, avoiding blanket requests for all site locations.

SECTION VII
Consultation Fees

Native American, Alaskan Native, and Native Hawaiian individuals and organizations sometimes request payment or other compensation to respond to Federal agency requests for information on Native interests and concerns that relate to land use, environmental review, and other issues according to Federal law and regulation. Some misunderstandings seem to result from use of the term "consultation" as it appears in Federal statute and regulation. To use it in this context, the term means conducting a meaningful dialogue and exchanging information. Participation in this kind of consultation is not participation as a "consultant or expert" in the way that a contractor who provides technical services under a government contract might be called a consultant. Accordingly, "consultation" fees or "salary" are not appropriate to this kind of consultation.

The Army should not compensate members of the public, or employees of tribal government for contributing information or comments during Army administrative processes. A wide range of input is sought on the full spectrum of Army land use and environmental issues as well as proposed actions. It is essential to the interest of the general public that the Army obtain full and substantive input as a basis for its decisions. Additionally, tribal governments receive Federal funds for their operations, and consulting with the Army for legal compliance purposes is viewed as an inherently governmental function for tribal governments. Thus, Army installations should not provide compensation to salaried employees of tribal governments for contributing information or comments during consultation that is required by law, Federal statutes or Federal mandates. On the other

hand, nothing prevents the Army from contracting for the services of qualified Native American, Alaskan Native, or Native Hawaiian individuals, firms, or organizations, or to enter into Cooperative Agreements to produce reports or other specific products. Such reimbursable services would not constitute "consultation" as used in these guidelines.

Under limited circumstances, it is appropriate for the installation to assist a party who otherwise would not be able to participate in the agency's process. The U.S. Army may assist in paying travel expenses (not salary) only under the Joint Travel Regulations (JTR) which gives authority to reimburse non-government employees for travel and per diem. It is the installation commander's responsibility to review each situation and to make the determination for or against travel and per diem authorization. Often, traditional religious leaders are not salaried tribal government employees, but are key to the consultation process and may, at the commander's discretion, be provided an honoraria in addition to reimbursement for travel expenses.

Consultation costs should be programmed into the project budget. Mailing and cost of telephone contacts should be minimal. However, expenses for meetings can include travel and per diem for U.S. Army personnel and, when authorized by the JTR, travel and per diem for tribal representatives. A consultation budget should identify costs early in the preplanning phase, and these should be included in the general project cost estimates. Attached to this estimate should be a list of the personnel assigned to each task in the project consultation plan and the names of the U.S. Army point-of-contact authorized to sign the final consultation agreement.

Section VIII
Historical Overview of Federal Indian Policies

To fully understand the consultation process presented in these guidelines, it is necessary to understand the historical relationship between Native American groups and the U.S. Government, particularly the U.S. Army. The variety of laws and regulations that have been promulgated over the past century dealing with Native American resources reflect the historical development of Federal policies in general concerning Native populations in the United States. The historical development of Federal Indian policies has a direct relationship with the current situation regarding Native American consultation.

It is important to note that archeological data indicate human presence in North America 12,000 to 15,000 years ago, when populations reached what is now Alaska by crossing the Bering Strait from Asia. By the time of Columbus' expedition in 1492, a wide variety of cultures had developed across the continent and, indeed, the entire Western Hemisphere. Initial contact between European explorers and traders eventually led to the establishment of permanent colonial fortifications and settlements. The historical circumstances of the relationship and hostilities between the Indians and the European and American settlers had a profound effect on the Native American, Alaskan Native, and Native Hawaiian groups. These historical circumstances define how Indian groups were dispersed, how and why traditional cultural affiliations were disrupted, and, ultimately, how Native groups have recently been afforded the opportunity to celebrate their cultural heritage and renew religious traditions.

VIII–1. Continental United States

Colonial Period
With the notable exception of Spanish exploration and trade in the American West and Southwest, most of the European activities in the continental U.S. prior to the American Revolution were restricted to the eastern portion of the continent. Thus, the Native groups who occupied the areas east of the Mississippi River, and particularly those in the Northeast, had the most contact with the new European colonists and suffered the greatest consequences of European colonial expansion (Washburn 1988:3). Some of these impacts were intentional on the part of the new settlers, such as negotiating land agreements that essentially appropriated the most productive lands for European settlement and restricted Native Americans' access to hunting grounds. Others were inadvertent, though no less serious in their consequences. For example, the introduction of European diseases to which the Native Americans had no immunity resulted in the near annihilation of large segments of the Native populations. Still other policies attempted to assimilate Native Americans into the European culture through education and religious missions.

Initially, European colonial policies regarded Native American groups as sovereign nations, but in this age of European exploration and expansion, the treaties that were negotiated with Native tribes served individual interests of each European nation and each individual colony (Washburn 1988:2). By the mid-eighteenth century, the British colonies developed a coordinated Indian policy that attempted both to protect the Indians from opportunistic traders and speculators and ensure that the British gained control over land (by negotiating boundary lines) and the fur trade with the Indians (BIA n.d.:3). In addition, this policy enlisted the support of the Indians in the British struggle against the French.

American Revolution and Early Federal Period
The colonial revolt against the British crown had far-reaching effects on the Native Americans. During the American Revolution, both the colonial and British powers attempted to enlist the support of Indian tribes. Most of them, however, either supported British army (Gibson 1988:212). In 1775, the Continental Congress took bold steps toward independence from the British empire, two of which set in force the long history of relationships between the U.S. Army and Native Americans. In June of that year, the U.S. Army was established by an Act of Congress to supplement the colonial militias in the fight against the British Army. In a separate move, the Congress also established a Committee on Indian Affairs (BIA n.d.:3).

The Committee on Indian Affairs consisted of three departments (Northern, Middle, and Southern), each of which had its own Commissioner. Because European (now U.S.) settlement had not yet extended far past the Appalachian/Allegheny mountains, Native groups that occupied the Great Lakes, Plains, and the entire West were affected mostly by traders and explorers rather than U.S. policy. The main goal of the U.S. Indian Commissioners initially was to simply preserve peace with the Indians, primarily by preserving Indian land claims and restricting white settlement on Indian lands (Gibson 1988:218). After the close of the Revolutionary War, however, the role of the Committee on Indian Affairs evolved in response to the continuing expansionist policies of the U.S. government. One of the first treaties negotiated by the new U.S. government with an Indian tribe (a treaty with the Delaware Indians signed in 1778) implied that an Indian state might eventually be created (BIA n.d.:4; Prucha 1988:47). In fact, most of the treaties negotiated during this period involved the removal of tribes to lands further west (Kvasnicka 1988:196).

In 1784, the administration of Indian affairs was placed under the War Department. The Secretary of War was directed to place the armed militia at the disposal of the Indian commissioners for negotiating treaties with the Indians, and military force became a major component of U.S.-Indian relations (Prucha 1988: 40). The relationship of the new republic with Native Americans was greatly influenced by this administrative decision, and the Federal Indian policies that developed throughout the nineteenth century reflected it.

Early Nineteenth-Century Land Claims and Indian Removal Policies
Shortly after the turn of the nineteenth century, the United States

entered a period of extremely rapid growth in terms of land area. The geographic pattern of new land claims made by the United States greatly influenced the development of government policies toward Native American groups. In 1803, the Louisiana Purchase effectively doubled the size of the land area claimed by the United States. In 1818, the United States and Britain developed a policy of joint territorial occupation of the Pacific Northwest, and in 1819 Florida was appropriated. These land claims left the vast Plains region out of the immediate realm of new U.S. settlement; thus, a policy emerged to remove Native American groups to the Plains (Kvasnicka 1988:196). This policy was codified in 1830 with the passage of the Indian Removal Act (BIA n.d.:4; Prucha 1988:45).

Between 1830 and 1835, numerous tribes were moved to Indian Territory (now largely Oklahoma and portions of surrounding states) as part of this removal policy. These groups included the Chickasaw and Choctaw from Mississippi, the Seminoles from Florida, the Creeks from Alabama, and the Cherokee from North Carolina. A small number of Cherokee Indians remaining in North Carolina, however, eventually were granted a reservation and became known as the Eastern Cherokee (Tindall 1984:406-407).

By mid-century, the U.S. claimed even more land, including Texas in 1845 and California in 1850. With the Plains region, and, hence, Indian Territory, essentially surrounded by new U.S. settlement, the interior portions of the continent were soon subjected to similar pressures for non-Indian settlement. The Indian removal policy was modified, primarily to accommodate the pattern of new U.S. settlement.

Frontier Army and Indian Wars

At mid-century, a so-called Permanent Indian Frontier had been established just west of the Mississippi, marked by a series of military posts stretching from Fort Snelling, Minnesota, to Fort Jesup, Louisiana (Utley 1984:37). Considering it manifest destiny for the new republic to occupy the entire continent from coast to coast (Tindall 1984:512), the U.S. government and the society it represented began to amend the Indian Removal policy to claim more land for white settlement (Prucha 1988:47). The construction of railroads across the interior of the continent both facilitated new white settlement and restricted the reach of Native American cultures by inhibiting access to traditional hunting grounds and by narrowing the scope of the designated Indian lands (Gibson 1988:223).

Increasingly, the removal policy was replaced with the concept of reservations, defined as a series of discreet areas in which individual tribes would be placed (Prucha 1988:48; Utley 1984:46-46). Over several decades, numerous treaties were negotiated between Indian tribes and the U.S. government to define these tracts of land and outline Federal responsibilities for the reservations. In California alone, 18 treaties were negotiated with 139 different Native groups, resulting in over 12,000 square miles of land being designated as reservations (Utley 1984:52). The reservation land was not contiguous, however, and instead consisted of numerous small tracts of land. As one of the most dramatic examples of the ultimate failure of the reservation system, the California Indian population fell from 150,000 in 1845 to only 35,000 in 1860. In addition, the U.S. Congress never ratified many of the early treaties. Rather than through warfare or other military hostilities, death to the California Indians came primarily from disease, starvation, malnutrition, and homicide.

Restricting individual Indian tribes to discreet land areas seriously disrupted the very fabric of their societies. The Western concept of land ownership did not exist prior to colonization, and many Native groups had long traditions of hunting on large areas of land. Intertribal warfare was a common occurrence, in part because of overlapping hunting areas, but Native groups operated largely under a system of hunting and fishing rights rather than land ownership. When the U.S. government assigned, through treaties, discreet areas of land for Indian settlement, such traditional Native rights to hunting and fishing areas were restricted. One of the most significant results of the restriction of Native American land areas was the eruption of warfare with the U.S. Army that had been assigned to defend non-Indian settlements and transportation routes but also to enforce Indian rights on reservations (Gibson 1988:223; Utley 1988:163).

Military power was also used in many instances to force treaty negotiations. In the Pacific Northwest, some of the most significant hostilities included the Rogue River War (1855), the Yakima War (1856), and the Battles of Four Lakes and Spokane Plains in 1858. These last events essentially closed the era of hostilities in the Pacific Northwest. By 1860, all of the Oregon and Washington Indian treaties had been ratified (Utley 1984:53).

Similar programs of big talks (treaty councils) enforced by big sticks (the U.S. military) evolved across the continent. In the Plains region, the first major treaty council was held near Fort Laramie in 1851, now in Wyoming (Utley 1984:61). These treaty negotiations involved 10,000 Sioux, Cheyenne, Arapaho, Crow, Gros Ventres, Assiniboine, Arikara, and Shoshone as well as 270 U.S. Army soldiers. The advantages of the military aspect to treaty negotiation and enforcement increasingly became apparent, and by the 1860s, the military approach dominated Federal-Indian relations.

The U.S. Army was also undergoing changes in its administration, policies, and "peace-time" roles. Following the American Revolution and the birth of the United States, numerous debates were held concerning the necessity of a peace-time regular army. At mid-nineteenth century, the role of the Army had largely been restricted to specific international hostilities, such as the War of 1812 and the Mexican War, among others. The "Indian problem" helped convince some that a permanent regular army, supplemented by a volunteer army in times of distress, was necessary and beneficial (Utley 1988:164).

During the U.S. Civil War, the U.S. Army swelled with volunteers (Hagan 1988:52; Utley 1988:167). The regular Army largely pulled out of the Plains and West to go back east to fight the Confederates, and the Volunteer Army was left to deal with the Indian problem (Utley 1984:70, 1988:167). The frontier commanders were given (or left with) a great deal of autonomy, leading to many hostile conflicts with Indian tribes and great military debacles (Utley 1973:36 [Note]). Eventually, these hostilities led to the development of a Federal "Peace Policy" concerning Native American tribes.

Indian Wars of the Peace Policy

Increasingly, the "Indian problem" was viewed less as a military issue and more an issue of social policy. Nevertheless, the decades immediately following the Civil War were a time of some of the most brutal and infamous conflicts between the U.S. Army and Native American tribes. Part of the reason for this seemingly contradictory policy was the negotiation of numerous treaties that resulted in the eventual placement of all remaining continental Indian tribes on increasingly smaller reservations. A large treaty council was held in 1867 at Medicine Lodge Creek, south of Fort Larned, and other treaties were negotiated at Fort Laramie (Utley 1984:114, 122).

The insistence on the part of the U.S. government that Indians be restricted to increasingly smaller reservations, and the resistance on the part of some Indians to being landlocked in such small areas, was the instigation for most of the major hostilities during this period. The role of the U.S. Army was one of policing non-reservation lands. Initially, Army activity within the boundaries of Indian reservations was prohibited. This ban was lifted, however, as a result of the Red River War (1874-75) in the Texas Panhandle ,

which stemmed from attacks on white settlers by Comanches, Cheyennes, and Kiowas (Utley 1984:174-175).
Most of the major battles between the U.S. Army and Indian groups resulted from misunderstandings, overreactions, and miscalculations on the part of the Army as a result of the "loose chain of command" that comprised the Army's administrative structure (Utley 1988:164). Many of the so-called Indian uprisings and the U.S. Army response to them made headlines in newspapers across the country. Such news accounts greatly influenced public opinion by focusing on the alleged hostility of the Indians and the inability of the Army to deal with the issue effectively. No matter the cause, however, the American public, and the Federal government became increasingly concerned about the seemingly endless Indian wars.

In response to the growing hostilities between the U.S. Army and Native tribes in the Plains regions, as well as rising public opposition to continued warfare with the Indians, the U.S. Congress established an Indian Peace Commission (BIA n.d.:5; Hagan 1988:53). At a meeting held by the Peace Commission in 1868, the military representatives held sway. The Commission adopted the position that the concept of "domestic dependent nations" should be abandoned and a policy of assimilation should provide the direction of Federal Indian relations (Utley 1984:124). This meeting effectively marked the end of treaty negotiations with Native Americans, and treaties were formally banned by an Act of Congress in 1871 (BIA n.d.:6).

Indian Reform Organizations and Policies
A key aspect of this Peace Policy involved assimilating the Indians into the mainstream of American society with a heavy emphasis on education, including religious conversion (Hagan 1988:53; Utley 1984:210). Although attempts to "civilize" the Indians had occurred since the earliest colonial times, the efforts of the Peace Policy brought the full force of Federal action to the cause. This Peace Policy also helped pacify the growing public awareness of, and disdain for, the brutal military actions taken against some of the Indian tribes.

Numerous civic organizations were established to promote the Peace Policy and establish policies for protecting the welfare of the Indians. Such groups included the Indian Rights Association, the Women's National Indian Association, the Boston Indian Citizenship Committee, and the Ladies' National Indian League. Representatives from all of these groups attended the Lake Mohonk Conference of the Friends of the Indians in 1889. The conference gave birth to U.S. Indian policy of reform (Utley 1984:205-206). Whereas the reservation system initially had been established as a means of preserving the sovereignty of individual Indian tribes, the new reform policy was designed to eliminate tribal associations among individual Indians to facilitate their assimilation into the mainstream of American society. Many of the reformers felt that through this approach the reservation system could eventually be abandoned entirely, and Congress hoped it would reduce the costs of sustaining Indian populations (Hagan 1988:57).

The three main areas of concern for the reformers were land, education, and law, as they pertained to Indians (BIA n.d.:7; Utley 1984:216-219). In 1887, the passage of the Dawes General Allotment Act initiated the process of reversing the reservation system (BIA n.d.:7; Hagan 1988:61; Utley 1984:213). Under the terms of this act, Indian reservations were divided and private parcels were allotted to individual Native Americans. If, after 25 years, the individual were deemed "competent" (meaning suitably assimilated into American society through education, etc.), the individual would gain clear title to the parcel. As with many, if not most, of the U.S. policies regarding Native Americans during this period, this Act had contradictory aims.

The ratio of the size of the allotted parcels to the Native American population resulted in a large amount of surplus reservation land after allotment. This surplus land, which often was the most agriculturally productive land, was distributed among white settlers in the region (BIA n.d.:7; Tindall 1984:736; Utley 1984:214). Thus, access by Native Americans to land and natural resources was restricted even further.

Indians who took such land allotments automatically were granted U.S. citizenship, but citizenship made them subject to both civil and criminal laws. For the remaining Indians, their legal status was even more problematic, falling somewhere between the concept of "domestic dependent nations" and full-fledged U.S. citizenship. To meet the third area of reformer's concerns-education, Congress appropriated money for education. Some government schools were opened, but most of the new schools were contract schools run by missionaries (Utley 1984:216).

End of Frontier Period
By the end of the nineteenth century, virtually all Native American tribes in the continental U.S. had been removed and restricted to reservations. Most of the Native American tribes along the eastern seaboard had their populations greatly reduced in the early colonial period by succumbing to new European diseases, others had been Christianized, and the remaining tribal populations had been displaced by the time of the American Revolution. In California and the Pacific Northwest, final treaty negotiations were accomplished by 1860, although the series of treaties negotiated in California in 1851-52 were never ratified by Congress. The final removal of Indian tribes in other parts of the country was relatively peaceful, but that of other tribes was marked by infamous battles.

In the Southern Plains, the Red River War (1874-75) generally marked the end of major hostilities in that region (Utley 1984:174). In the Northern Plains, the seminal events marking the end of hostilities with Native American tribes were the Battle of Little Bighorn in 1876, the reluctant surrender of the Hunkpapa Sioux chieftain Sitting Bull in 1881, and his death during the Ghost Dance troubles in 1890 (Utley 1984:173, 179). In the Southwest, the surrender of the Apache chief Geronimo at Skeleton Canyon, Arizona, in 1886 marked not only the end of hostilities in that region, but also the last major Indian war in the continental United States (Utley 1984:201).

The resulting landscape was dramatically different at the end of the nineteenth century. In 1886, Indian reservations or trust lands covered some 140 million acres. By the early twentieth century, however, primarily as a result of the Dawes Act, Indian reservation lands in the continental U.S. totaled less than 50 million acres of land, most of which were unsuited to agricultural pursuits (BIA n.d.:7). It has been estimated that, between 1887 and 1900, only 3,285,000 acres of land allotments were made to Indians but 28,500,000 acres of former Indian land were designated as "surplus land" (Kelly 1988:66).

Most of the vast reaches of land between the scattered reservations had become settled by Americans and new European immigrants. By 1890, the frontier line (defined as separating areas of differential population density) was no longer discernible (Tindall 1984:743). The frontier period and the Indian Wars that dramatically marked this era were over, but the so-called Indian problem was not.

Early Twentieth Century
During the early twentieth century, the failures of the reservation system became increasingly apparent, and a variety of Federal policies and laws were adopted to rectify the problem. Whereas the Dawes Act granted Indians who had obtained a land allotment title to the land after 25 years, the passage of the Burke Act in 1906 granted such title immediately to those Indians deemed "competent" (Kelly 1988:67). In 1924, citizenship finally was extended to all Native Americans (BIA n.d.:7-8; Kelly 1988:71; Tindall 1984:736). The passage of the Indian Citizenship Act was made possible in part because of public appreciation for the extent of Indian service in the

U.S. Army during World War I.

In the 1930s, several important pieces of legislation affecting Native Americans were passed. The land allotment policy, and the restrictions it placed on Native Americans, was reversed with the passage of the Indian Reorganization Act (IRA, also known as the Wheeler-Howard Act) in 1934 (BIA n.d.:8; Kelly 1988:73). This act protected Indian lands from further unrestricted sales, allowed Native Americans to acquire additional Indian lands and helped foster tribal economic enterprises. The IRA also allowed for the revival of tribal governments and the establishment of tribal law, both of which led to the present-day system of tribal councils for many of these groups. That same year, the Johnson-O'Malley Act expanded Federal participation and funding for educational opportunities for Native Americans within the public school system. In 1935, the creation of the Indian Arts and Crafts Board within the Department of the Interior helped foster economic enterprises for Native Americans based on traditional Native American crafts (BIA n.d.:9; Kelly 1988:73).

World War II to Present

The participation of Native Americans in World War II was even greater, in terms of numbers of individuals who served voluntarily, than that of World War I. Native American service in the military undoubtedly helped influence public opinion and governmental policies regarding the treatment of Native groups (BIA n.d.:9). Simultaneously, these policies helped increase the participation of Native Americans in the mainstream of American social and economic life and enhanced the ability of Native groups to reclaim their cultural heritage through, in part, self-government.

The Bureau of Indian Affairs was reorganized to include the "area office," which in effect decentralized the administration of Native American concerns (BIA n.d.:9). In 1946, the Indian Claims Commission was established, allowing Indians to pursue land reparations (Kelly 1988:74). Initially, such reparations consisted primarily of financial awards. By 1969, settlement awards to Native Americans totaled over $333 million (Kelly 1988:74).

These monetary awards, however, were used by some to advocate the complete and final removal of Federal control over the welfare of Indian tribes (Kelly 1988:74). Termination procedures were introduced in the 1950s to effectively remove the status of Native Americans as "wards of the United States" and to grant them the full rights and responsibilities as other U.S. citizens (Kelly 1988:74). Such termination procedures were largely abandoned, however, during the Civil Rights movement in the 1960s (BIA n.d.:10-11).

In 1966, the appointment of Robert L.Bennett, an Oneida Indian, as commissioner of the Bureau of Indian Affairs changed the direction of BIA policies. Bennett helped transform the BIA coordinating and advisory agency, thus allowing for greater self-determination on the part of Native American tribes. Thus, the BIA turned from its role as a management agency to one of service and support to Native American groups (BIA n.d.:11).

During the 1960s, government programs designed to benefit disadvantaged social groups were extended to Native Americans (Kelly 1988:78). As with other minority groups in the 1960s, Native Americans also began to find and exercise their political voice during this turbulent decade. In the late 1960s and early 1970s, Indian protests, particularly the Indian occupations of Federal lands, such as Alcatraz in San Francisco Bay (1969), Nike Missile Site in Chicago (1971), and Mount Rushmore (1971), received national attention. Perhaps the most dramatic example of Native American protests was the 1973 siege of Wounded Knee by members of the American Indian Movement (AIM) (BIA n.d.:12, 14).

In a message to Congress in 1970, President Nixon called for a new era of Federal Indian relations, one that allowed for greater self-determination without fearing the loss of the protective and trust services of the U.S. Government (Kelly 1988:78). In contrast to the financial reparations of the 1950s, this new policy involved the return of land to Indian tribes. The first example was the return of Blue Lake and 48,000 acres of surrounding land to the Taos Pueblo Indians of New Mexico (BIA n.d.:12-13).

In 1978, the American Indian Religious Freedom Act was passed to protect traditional religious practices among Native Americans (Kelly 1988:79). In 1979, the National Tribal Chairmen's Association (NTCA) was established to advise the BIA on Federal Indian policy (BIA n.d.:13). Through the 1980s and early 1990s, additional laws and regulations were passed to expand the goal of self-determination for Native American groups. And in 1990, a new type of reparative action was initiated: the Native American Graves Protection and Repatriation Act calls for the return, or repatriation, of Native American human remains, funerary objects, sacred objects, and items of cultural patrimony to the most closely affiliated federally recognized Native American group, if they request these remains and/or objects.

VIII–2. Alaska

Russian Colonial Period

The history of interactions between Alaskan Natives and colonial powers followed a different path from that of the continental United States. In the continental U.S., the major hostilities resulted primarily from the incessant desire by the European and American settlers for land for permanent settlements. Colonial presence in Alaska, on the other hand, was almost exclusively for trade and exploitation of natural resources, rather than permanent settlement or industry until well into the twentieth century. Thus, the level of hostilities with Alaskan Native peoples was significantly lower than was the case with Native Americans in the continental U.S.

Vitus Bering, a Danish explorer working for the Russian government, first explored the area in 1741 (Webb 1985:22). The Russian American Company was begun soon after as a Russian commercial trading venture in Alaska. For the next century, most of the trading posts, fortifications, and limited settlements were restricted largely to the islands and coastal region of Alaska, but the company had military posts as far afield as California and Hawaii and explored portions of Alaska interior regions as well (Webb 1985:26, 32). Nevertheless, traders and explorers undoubtedly penetrated the interior regions of Alaska and interacted with Native groups in those areas.

U.S. Territorial Period

By the mid-nineteenth century, the Russian American Company was not financially successful, so the Russian government divested themselves of their claim to the region. In 1867, Russia negotiated the sale of Alaska to the United States for over $7 million (cf. "Treaty with Russia," 30 March 1867, 15 Stat. 539). This purchase became known in the U.S. as Seward's Folly, named after the Secretary of State who pushed for the deal, and reflected the limited interest in that region held by the American public (Webb 1985:46).

The terms of the sale of Alaska by Russia to the U.S. contained only passing reference to Alaskan Natives. This passage states only that "the uncivilized tribes will be subject to such laws and regulations as the United States may, from time to time, adopt in regard to aboriginal tribes in that country" ("Treaty with Russia," 30 March 1867, 15 Stat. 539). Despite the exclusion of Alaskan Natives from any political considerations during this sale, American activities in the region ultimately had limited effect on Alaskan Natives for the next century.

U.S. Military in Alaska

American trading and mining activities in Alaska continued to increase, but the strategic importance of Alaska to American defense became increasingly apparent as the European colonial empires expanded their activities around the globe. By the dawn of World War

II, the extent of U.S. activities in the region began to increase rapidly. The U.S. Army initiated their presence in Alaska in 1867, soon after the purchase of Alaska by the U.S. government, with the establishment of Army headquarters at Sitka (USARAK 1995:n.p.). Army activities largely consisted of exploration and mapping of the area until 1896, when the discovery of gold deposits drew thousands to the region as had the gold rush in California a half century earlier. With the rapid increase in settlement, the Army provided police duties to help establish some semblance of law and order to the region. During the first half of the twentieth century, the Army worked to develop the infrastructure in Alaska, putting up telegraph lines across the region in 1900 and completing the ALCAN highway (1,428 miles long) at the beginning of World War II to join Alaska with the continental U.S. (USARAK 1995:n.p.).

Military activities of the U.S. Army were initiated in the early days of World War II, shortly after the Japanese bombed Pearl Harbor in 1941. The Japanese attacked Dutch Harbor, Alaska, in June of 1942 and four days later took the Aleutian Islands of Attu and Kiska. The U.S. Army successfully recaptured Attu in May 1943, and found that the Japanese had already abandoned Kiska when the Army attacked that island in August of that year (USARAK 1995:n.p.). Following their withdrawal from Kiska, the Japanese never again attacked Alaska or its islands. Alaska remained, however, an important strategic location for the U.S. Army throughout the war.

Alaska Statehood

During the Cold War that followed, the strategic importance of Alaska became even more apparent as the narrow Bering Strait is all that divided the United States from the Soviet Union. But the main development that affected Alaskan Natives during the territorial period was the discovery of vast oil reserves in the 1950s. Although limited drilling had taken place earlier, the Richfield Oil Corporation discovered a huge reserve of oil on the Kenai Peninsula in 1957 (Hunt 1976:115-116). This discovery encouraged the U.S. Congress to bring Alaska into the union as the 49th state. The oil reserves also eventually helped galvanize Alaskan Natives to organize politically to make claims for land and mineral rights.

The conversion of Alaska from a U.S. territory to a State in 1959 placed immediate pressures on the available land because the Alaska Statehood Act authorized the new State government to select "for its own use 130 million acres from the Territory's public domain" ("Alaska State Hood Act," 7 July 1958, 72 Stat. 339, Public Law 85-508). Although the act acknowledged "the right of Natives to lands they used and occupied," this provision in effect created yet another government institution with the legal mandate to claim land. In 1961, a group of Athabascan Indians living in the Minto Lakes region of Alaska petitioned the Department of the Interior to halt the State of Alaska from taking a large area of land near Minto Village. With each new claim made by the State of Alaska, additional Alaskan Native groups filed similar protests. At a conference held in 1963, the decision was made to settle the issue at the Federal level.

In 1966, over 250 leaders from numerous regional and local Alaskan Native associations attended the first State-wide meeting of Alaskan Natives. This group recommended that the Federal government put a freeze on land claims until suitable terms could be agreed upon. The following year, the Alaska Federation of Natives was formed, which afforded Alaskan Natives a unified voice that previously had been absent regarding land claims.

Alaskan Natives and the State government continued to compete for land claims. The process of land claims, and the response of Alaskan Natives to the issue, ultimately provided the organization needed to effectively deal with the Federal government, and for the government to effectively deal with Alaskan Natives. The discovery of oil at Prudhoe Bay on Alaska's North Slope in 1967 added another twist to the issue of land claims, instilling large financial incentives into making land claims (Webb 1985:259). Thus, the Federal government finally intervened, and in 1971, Congress passed the Alaska Native Claims Settlement Act [ANCSA].

ANCSA established State profit-making corporations for Alaskan Natives. In all, 12 regional corporations and more than 200 village corporations were formed to oversee the ownership and management of land and money resulting from the claims settlements. In all, Alaskan Natives, through their regional and village corporations, retained 44 million acres of land and nearly one billion dollars in compensation for the extinguishment of all aboriginal claims totaling 330 million acres.

The two-fold by-product of the Alaska Native Claims and Settlement Act-large-scale land and cash reparations and the establishment of Alaskan Native for-profit corporations-dramatically distinguishes the current political situation of Alaskan Natives from that of the continental Native Americans. In so doing, the U.S. Congress rejected the policy of land trusts that for over a century had dominated Federal Indian policies in the lower 48 states. Yet the Act also brought about the largest cession of land to a group of Native Americans in the history of the United States. The transfer began in 1974.

The end of the Cold War has undoubtedly lessened the tensions between the U.S. and the Soviet Union, but the strategic importance of a U.S. Army presence in Alaska has not been diminished. Neither has the pressure for access to the vast oil deposits, as the U.S. Congress continues to debate whether to open the North Slope region for oil drilling. The inclusion of Alaska Native villages into recent cultural resources legislation also helps to ensure that the cultural heritage of Alaskan Natives will remain a priority in Federal legislation.

VIII–3. Hawaii

Hawaiian Sovereignty

Although Spanish explorers may have visited the Hawaiian islands prior to the eighteenth century, the first documented visit by Europeans occurred in 1778, when British Captain James Cook explored the Pacific coast of the U.S., Alaska, and Hawaii. He named the islands the Sandwich Islands (Tabrah 1980:11). At the time of Cook's visit, the eight islands that comprise Hawaii were under separate rule.

In the late eighteenth century, King Kamehameha I (or Kamehameha the Great) brought all of the islands under one rule, some through war and others through treaty (Tabrah 1980:23). The site of one of these conflicts-the "Nuuanu pali" or cliffs, northeast of Honolulu-remains in important site in Hawaiian culture. It was here that Kamehameha's army sent hundreds of enemy warriors to their death in 1795 (Joesting 1972:57).

In addition to unifying the islands under one rule, King Kamehameha also initiated relationships with European and U.S. explorers, traders, and, eventually, settlers. These relationships were made more intensive and more extensive by his succeeding heirs. Kamehameha II negotiated a treaty between the Kingdom of Hawaii and the U.S. in 1826. Subsequent treaties with the U.S. were signed in 1842, 1849, 1875, and 1887 to govern navigation and commerce [U.S. Public Law 103-150 (1993)].

By the late nineteenth century, large plantations (most dedicated to sugar production) occupied most of the larger islands (Hawaii, Maui, Oahu, and Kauai). Most of the plantation owners (or those who held the majority corporate interests in the plantations) were of European or U.S. descent, and the workers were mostly Native Hawaiians and immigrants from the Far East and elsewhere (Tabrah 1980:86). Numerous religious missions were also established throughout the islands.

U.S. Provisional Government

Initially, the U.S. recognized the Kingdom of Hawaii as a sovereign

nation, but in 1893, the U.S. government overthrew the monarchy, seizing the Iolani Palace, the home of Queen Liliuokalani and the seat of the Hawaiian government, along with crown and government lands (Tabrah 1980:100-101). The overthrow was accomplished both for military (strategic) and corporate interests in the Hawaiian islands. A provisional government was established, and Hawaii was proclaimed a protectorate of the United States. It was not until a century later that the United States finally acknowledged these acts to have been unlawful [U.S. Public Law 103-150 (1993)]. In 1900, Hawaii officially was designated as a U.S. territory with the passage of the Organic Act.

U.S. Military in Hawaii

In the early twentieth century, U.S. commercial interests in the Hawaiian islands continued to expand while the strategic military position of the islands was exploited. Camp McKinley (now Kapiolani Park) was replaced by Fort Shafter beginning in 1905 and Schofield Barracks, the largest Army post in Hawaii, was established in 1909. Pearl Harbor is the most dramatic example of U.S. defense activities in Hawaii islands, for it was here that in 1941 much of the U.S. Navy was bombed by the Japanese, thus bringing the U.S. into World War II. In addition to the military posts on the major islands, the lesser islands were also used for defense purposes. The now uninhabited island of Kaho'olawe was once used for target practice by the U.S. Navy and Air Force. In 1957, the U.S. Army Pacific was established at Fort Shafter after the Far East Command was deactivated.

Hawaiian Statehood

In 1959, Hawaii became the 50th state. U.S. relationships with Native Hawaiians have followed a separate course from the relationships with Native Americans and Alaskan Natives. Because of the cultural isolation of the historic Native Hawaiians relative to the U.S. mainland and Alaska, and the historic patterns of treatment (no removal policies, instead assimilation into the U.S. ventures there), various Native Hawaiian organizations have been designated as consulting parties for Native Hawaiian issues rather than establishing independent tribal councils or similar organizations. The Department of Hawaiian Home Lands was established to administer land set aside for Native Hawaiians. The U.S. also turned most of the former crown and government lands to the State of Hawaii, reserving a portion of these lands for Federal use.

In 1978, the Office of Hawaiian Affairs (OHA) was created under the State constitution. The function of the OHA is to hold title to real and personal property for Native Hawaiians and for the "performance, development and coordination of programs and activities relating to Hawaiians," with the exception of those responsibilities specifically designated under the jurisdiction of the Hawaiian Home Lands Commission. The OHA is officially designated in some cultural resources legislation as an official organization that acts on behalf of Native Hawaiians.

The island of Kaho'olawe is an interesting example of Federal recognition of Native Hawaiian cultural concerns. Kaho'olawe island is considered a *wahi pana* (sacred place) by Native Hawaiians, and in 1990, President Bush directed the Defense Department to discontinue use of the island for bombing and target practice. The island is currently slated to be developed and managed as a cultural resource learning center for Native Hawaiians.

The U.S. Army is also contributing to the recognition of the cultural heritage of Native Hawaiians, having commissioned a sculptor to carve a memorial to Native Hawaiian warriors. The statute will be a replica of an ancient Akua-ka-lepa, a crescent row of carved standing images, and will be placed at the entrance to the Army Museum at Fort DeRussy in Waikiki on Oahu. The monument will be dedicated to all Hawaiians who have fallen in battle, from ancient times to the present. The OHA is also contributing to the project.

The status of Native Hawaiians under Federal policy is significantly different and far less codified than the status of Native Americans and Alaskan Natives under most cultural resources legislation. Whereas Native Americans have reservation lands and Alaskan Natives have lands owned by regional corporations, Native Hawaiians are represented by State offices provided for under the Hawaii State Constitution and recognized by the U.S. Government. These Native Hawaiian organizations nevertheless are afforded the same rights and privileges under some cultural resources legislation as Native American and Alaskan Native groups. Still, there are some calling for Hawaiian sovereignty.

References Cited in Section VIII

Bureau of Indian Affairs n.d. Federal Indian Policies...from the Colonial period through the early 1970's. Washington, D.C.: Bureau of Indian Affairs, U.S. Department of the Interior.

Gibson, Arrell M.
1988 Indian Land Transfers. Pp. 211-229 in History of Indian-White Relations. Wilcomb E. Washburn, volume editor. Volume 4 of the Handbook of North American Indians. William C. Sturtevant, general editor. Washington, D.C.: Smithsonian Institution.

Hagan, William T.
1988 United States Indian Policies, 1860-1900. Pp. 51-65 in History of Indian-White Relations. Wilcomb E. Washburn, volume editor. Volume 4 of the Handbook of North American Indians. William C. Sturtevant, general editor. Washington, D.C.: Smithsonian Institution.

Hunt, William R.
1976 Alaska, A Bicentennial History. New York: W.W. Norton & Company.

Joesting, Edward
1972 Hawaii: An Uncommon History. New York: W.W. Norton & Company.

Kvasnicka, Robert M.
1988 United States Indian Treaties and Agreements. Pp. 195-201 in History of Indian-White Relations. Wilcomb E. Washburn, volume editor. Volume 4 of the Handbook of North American Indians. William C. Sturtevant, general editor. Washington, D.C.: Smithsonian Institution.

Kelly, Lawrence, C.
1988 United States Indian Policies, 1900-1980. Pp. 66-80 in History of Indian-White Relations. Wilcomb E. Washburn, volume editor. Volume 4 of the Handbook of North American Indians. William C. Sturtevant, general editor. Washington, D.C.: Smithsonian Institution.

Prucha, Francis Paul
1988 United States Indian Policies, 1815-1860. Pp. 40-50 in History of Indian-White Relations. Wilcomb E. Washburn, volume editor. Volume 4 of the Handbook of North American Indians. William C. Sturtevant, general editor. Washington, D.C.: Smithsonian Institution.

Tabrah, Ruth M.
1980 Hawaii: A Bicentennial History. New York: W.W. Norton & Company.

Tindall, George Brown
1984 America: A Narrative History. W.W. Norton & Company, New York.

USARAK (U.S. Army Alaska)
1995 About U.S. Army Alaska. USARAK Public Affairs Office.

Utley, Robert M.
1973 Frontier Regulars: The United States Army and the American Indian, 1866-1891. New York: McMillan Publishing Company.
1984 The Indian Frontier of the American West, 1846-1890. Albuquerque: University of New Mexico Press.
1988 Indian-United States Military Situation, 1848-1891. Pp. 163-184 in History of Indian-White Relations. Wilcomb E. Washburn, volume editor. Volume 4 of the Handbook of North American Indians. William C. Sturtevant, general editor. Washington, D.C.: Smithsonian Institution.

Washburn, Wilcomb E. (volume editor)
1988 History of Indian-White Relations. Volume 4. Handbook of North American Indians. William C. Sturtevant, general editor. Washington, D.C.: Smithsonian Institution.

Webb, Melody
1985 The Last Frontier: A History of the Yukon Basin of Canada and Alaska. Albuquerque: University of New Mexico Press.

Glossary

Section I
Abbreviations
This section contains no entries.

Section II
Terms

Advisory Council on Historic Preservation (ACHP)
The Council was established by Title II of the National Historic Preservation Act to advise the President and Congress, to encourage private and public interest in historic preservation, and to comment on Federal agency actions under Section 106 of the National Historic Preservation Act.

Antiquities Act of 1906
Provides for the protection of historic and prehistoric ruins and objects of antiquity on Federal lands, and authorizes scientific investigation of antiquities on Federal lands, subject to permits and other regulatory requirements.

Area of Potential Affect (APE)
The geographic area or areas within which a NHPA Section 106 undertaking may cause changes in the character or use of historic properties, if any such properties exist there. This area always includes the actual site of the undertaking, and may also include other areas where the undertaking will cause changes in land use, traffic patterns, or other aspects that could affect historic properties.

American Indian Religious Freedom Act (AIRFA)
States that the policy of the United States is to protect and preserve for American Indians their inherent rights of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians. These rights include, but are not limited to, access to sites, use and possession of sacred objects, and the freedom to worship through ceremony and traditional rites.

Archaeological Resource
Any material of human life or activities which is at least 100 years of age, and which is of archaeological interest (32 CFR 229. 3(a)).

Archaeological Resources Protection Act (ARPA) of 1979
Prohibits the removal, sale, receipt, and interstate transportation of archeological resources obtained illegally (without permits) from public or Indian lands and authorizes agency permit procedures for investigations of archeological resources on public lands under the agency's control.

Categorical Exclusion (CX)
Under the National Environmental Policy Act, CXs apply to actions that have no foreseeable environmental consequences to resources other than cultural resources and are not likely to be highly controversial. A list of approved Army CXs can be found in AR 200-2 and screening criteria for their application.

Cultural items
As defined by NAGPRA, human remains and associated funerary objects, unassociated funerary objects (at one time associated with human remains as part of a death rite or ceremony, but no longer in possession or control of the Federal agency or museum), sacred objects (ceremonial objects needed by traditional Native American religious leaders for practicing traditional Native American religions), or objects of cultural patrimony (having ongoing historical, traditional, or cultural importance central to a Native American group, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual of the group).

Environmental Assessment (EA)
An EA is prepared under NEPA for actions that the proponent does not anticipate will have a significant effect on the environment or if it is not known if the impact will be significant. An EA results in a Finding of No Significant Impact (FONSI) or a Notice of Intent (NOI) to prepare an EIS.

Environmental Compliance Assessment System (ECAS)
An Army program achieving, maintaining, and monitoring environmental compliance with Federal, State, and local environmental regulations. ECAS identifies environmental compliance deficiencies and develops corrective actions and cost estimates to address these deficiencies.

Environmental Impact Statement (EIS)
Under NEPA, an EIS is required when cultural resources may be damaged or "significantly adversely affected."

Executive Order (EO) 11593
Directs Federal agencies to provide leadership in preserving, restoring, and maintaining the historic and cultural environment of the Nation; to ensure the preservation of cultural resources; to locate, inventory, and nominate to the National Register all properties under their control that meet the criteria for nomination; and to ensure that cultural resources are not inadvertently damaged, destroyed, or transferred before the completion of inventories and evaluation for the National Register. The intent of EO 11593 have been integrated into the NHPA Section 110 through the 1980 amendments to that statute.

Executive Order 13007 on Indian Sacred Sites
Directs Federal agencies to consider Indian sacred sites in planning agency activities.

Historic Property or Historic Resource
As defined by the NHPA, is any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register. The term includes artifacts, records, and remains that are related to and located in such properties. The term includes properties of traditional religious and cultural importance (traditional cultural properties) which are eligible for the National Register because of their association with the cultural practices or beliefs of an Indian tribe or Native Hawaiian organization. The term "eligible for inclusion in the National Register" includes both properties formally determined as such by the Secretary of the Interior and all other properties that meet National Register listing criteria.

Integrated Cultural Resource Management Plan (ICRMP)
A 5-year plan developed and implemented by an installation commander to provide for the management of cultural resources in a way that maximizes beneficial effects on such resources and minimizes adverse effects and impacts without impeding the mission of the installation and its tenants.

Memorandum of Agreement (MOA)
A NHPA agreement resulting from consultation that stipulates measures the agency will take to avoid or reduce effects on historic properties in carrying out a specific action. The MOA is signed by the installation commander, the State Historic Preservation Officer, and the ACHP, if participating and pertains to a single undertaking.

Memorandum of 29 April 1994 on Government to Government Relations with American Indian Tribal Governments
Directs Federal agencies to conduct their relationship with Federally recognized Indian tribes on a government to government basis.

National Park Service (NPS)
An agency of the Department of the Interior to which the Secretary has delegated the authority and responsibility for administering the national historic preservation program.

Native American Graves Protection and Repatriation Act (NAGPRA) of 1990
Public Law 101-601, requires Federal agencies to establish procedures for identifying Native American groups associated with cultural items on Federal lands, to inventory human remains and associated funerary objects in Federal possession, and to return such items upon request to the affiliated groups. The law also requires that any discoveries of cultural items covered by the Act shall be reported to the head of the Federal entity who shall notify the appropriate Native American tribe or organization and cease activity in the area of the discovery for 30 days.

National Environmental Policy Act of 1969 (NEPA)
Public Law 91-190; 42 USC 4321-4347, states that the policy of the Federal government is to preserve important historic, cultural, and natural aspects of our national heritage and requires consideration of environmental concerns during project planning and execution. This act requires Federal agencies to prepare an Environmental Impact Statement (EIS) for every major Federal action that affects the quality of the human environment, including both natural and cultural resources. It is implemented by regulation issued by the Council on Environmental Quality (40 CFR Parts 1500-08) that are incorporated into AR 200-2, Environmental Effects of Army Actions.

National Historic Landmark (NHL)
This is a special category of historic property designated by the Secretary of the Interior because of its national importance in American history, architecture, archeology, engineering, or culture. Section 800.10 of the Council's regulations (36 CFR 800) and Section 110(f) of the NHPA specify some special protections for NHL's.

National Historic Preservation Act (NHPA) of 1966— [as amended (Public Law 89-665; 16 USC 470-470w-6)]
Establishes historic preservation as a national policy and defines it as the protection, rehabilitation, restoration, and reconstruction of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, or engineering.

National Register of Historic Places (National Register)
A nationwide listing of districts, sites, buildings, structures, and objects of national, state, or local significance in American history, architecture, archeology, or culture that is maintained by the Secretary of the Interior, NPS.

Programmatic Agreement (PA)
A special type of NHPA agreement typically developed for a large or complex project or a class of undertakings, such as ongoing installations operations and training, that would otherwise require numerous individual requests for Council comments under Section 106. Procedures for developing a Programmatic Agreement are spelled out in Council regulations at 36 CFR 800.13.

Record of Environmental Consideration
A NEPA associated document that is used to explain how a Categorical Exclusion (CX) designation is determined for a particular project or that identifies an existing NEPA document directly relevant to a project.

Section 106
Under the National Historic Preservation Act, Section 106 requires Federal agencies to take into account the affects of undertakings on historic properties listed, or those eligible for listing on the National Register and afford the ACHP an opportunity to comment on such undertakings. Section 106 requirements are implemented by regulations (36 CFR 800) issued by the ACHP.

Section 110
Under the National Historic Preservation Act, Section 110 outlines overall agency responsibilities with respect to historic properties.

Section 111
Under the National Historic Preservation Act, Section 111 addresses leases and exchanges of historic properties. It allows the proceeds of any lease to be retained by the agency for use in defraying the costs of administration, maintenance, repair, and related expenses of historic properties.

Section 402
Under the National Historic Preservation Act, Section 402 describes Federal agency responsibilities for historic properties in other nations and requires the head of the Federal agency to take into account the effect of an undertaking on property which is on the World Heritage List or on the applicable country's equivalent of the National Register to avoid or mitigate any adverse effect.

State Historic Preservation Officer (SHPO)
Under the NHPA, the SHPO has been designated in each State to administer the State historic preservation program, including identifying and nominating eligible properties to the National Register.

Undertaking
As defined by the NHPA is a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out or on behalf of the agency; those carried out with Federal financial assistance; those requiring a Federal permit, license, or approval; and those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency. If a proposed activity or action is determined to be an undertaking, Section 106 compliance and the procedures in 36 CFR 800 must be followed.

World Heritage List
A list developed by the World Heritage Committee containing properties forming part of the cultural heritage and natural heritage which the committee considers as having outstanding universal value based on different criteria. The list shall be updated every 2 years.

Section III
Special Abbreviations and Terms
This section contains no entries.

Index

This index is organized alphabetically by topic and subtopic. Topics and subtopics are identified by paragraph number.

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